**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Anders (nmi) Vinberg

Serial No.:   10/091,067

Filing Date: March 4, 2002

Group Art Unit: 2452

Examiner: Philip C. Lee

Confirmation No.   8007

Title: METHOD AND APPARATUS FOR GENERATING AND

RECOGNIZING SPEECH AS A USER INTERFACE ELEMENT

IN SYSTEMS AND NETWORK MANAGEMENT

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

APPEAL BRIEF

Appellant has appealed to the Board of Patent Appeals and Interferences ("*Board*") from the Final Office Action dated December 31, 2008 and the Advisory Action dated April 13, 2009. Appellant filed a Notice of Appeal and Pre-Appeal Brief on April 17, 2009 with the statutory fee of $540.00. This Appeal Brief is filed in response to Notice of Panel Decision from Pre-Appeal Brief Review dated July 30, 2009, finally rejecting Claims 1, 3-11, 13, 15, and 17-24.

REAL PARTY IN INTEREST

This Application is currently owned by Computer Associates Think, Inc. as indicated by:

an assignment recorded on 11/25/2002 from inventor Anders Vinberg to Computer Associates Think, Inc., in the Assignment Records of the PTO at Reel 013520, Frame 0528 (4 pages).

RELATED APPEALS AND INTERFERENCES

Appellant identifies the following appeal that may be related to or that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No.:	tbd
App. Ser. No.:	10/091,065
Priority Info:	Claims the benefit of 08/892,919
Appellant:	Anders Vinberg
Represented by:	Baker Botts LLP
Assignee:	Computer Associates Think, Inc. (pursuant to assignment recorded at reel 013520, Frame 0080)
Status:	Appeal Brief Submitted on August 25, 2009; awaiting decision of Board of Patent Appeals and Interferences

Appellant additionally identifies the following appeal that may be related to or that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No.:	2009-011165
Appn. Ser. No.:	09/949,101
Priority Info:	Claims the benefit of 08/892,919
Appellant:	Reuven (nmi) Battat, et al.
Represented by:	Baker Botts LLP
Assignee:	Computer Associates Think, Inc. (pursuant to assignment recorded at reel 012161, frame 0483)
Status:	Reply Brief submitted on December 30, 2008; awaiting decision of Board of Patent Appeals and Interferences

Copies of the Appeal Briefs filed in the identified cases are included in Appendix C. To the knowledge of Appellant's counsel, there are no other known appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision regarding this Appeal.

STATUS OF CLAIMS

Claims 1, 3-11, 13, 15, and 17-24 are pending and stand rejected pursuant to a Final Office Action dated December 31, 2008 (*"Final Office Action"*) and a Notice of Panel Decision from Pre-Appeal Brief Review dated July 30, 2009 (*"Panel Decision"*). Specifically, the *Final Office Action* includes the following rejections:

1. Claim 3 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention. However, in an Advisory Action dated April 13, 2009 (*"Advisory Action"*), the Examiner has withdrawn this rejection of Claim 3.

2. Claims 1, 4, 13, 15, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,367,670 issued to Ward et al. (*"Ward"*) in view of U.S. Patent No. 6,603,396 issued to Lewis et al. (*"Lewis"*), in view of U.S. Patent No. 5,745,692 to Lohmann II et al. (*"Lohmann"*).

3. Claims 9, 17, and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of U.S. Patent No. 6,021,262 to Cote, et al. (*"Cote"*).

4. Claims 5 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of U.S. Patent No. 4,881,197 to Fischer (*"Fischer"*).

5. Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of U.S. Patent No. 6,037,099 to Sabourin, et al. (*"Sabourin"*).

6. Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of U.S. Patent No. 6,421,707 to Miller, et al. (*"Miller"*).

7. Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of U.S. Patent No. 6,161,082 to Goldberg, et al. (*"Goldberg"*).

8.   Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* and *Fischer* in view of "Official Notice".

9.   Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* and *Cote* in view of U.S. Patent Publication No. 2001/0044840 filed by Carleton ("*Carleton*").

10.   Claims 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann* and *Cote* in view of U.S. Patent Publication No. 2004/0210469 filed by Jones et al. ("*Jones*").

11.   Claim 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward*, *Lewis*, and *Lohmann*, and *Cote* in view of U.S. Patent No. 6,185,613 to Lawson, et al. ("*Lawson*").

Claim 2 was previously cancelled in a Response to Office Action submitted by Appellant on January 13, 2006. Claims 12, 14, and 16 were previously cancelled in a Response to Office Action submitted by Appellant on November 16, 2006.

For the reasons discussed below, Appellant respectfully submits that the rejections of Claims 1, 3-11, 13, 15, and 17-24 are improper and should be reversed by the Board. Accordingly, Appellant presents Claims 1, 3-11, 13, 15, and 17-24 for Appeal. All pending claims are shown in Appendix A, attached hereto.

STATUS OF AMENDMENTS

In the Response to Final Office Action submitted by Appellant on March 30, 2009 (*"Response to Final"*), Appellant amended Claim 3 address a rejection of the claim under 35 U.S.C. § 112, second paragraph. In the Advisory Action delivered on April 13, 2009 (*"Advisory Action"*), the Examiner entered the amendments and withdrew the rejection of Claim 3 under § 112, second paragraph. (*Advisory Action*, pages 1-2). Claim 3 is shown in the amended form in Appendix A, attached hereto.

No other amendments were submitted after the *Final Office Action*. Accordingly, all amendments submitted by Appellant have been entered by the Examiner.

SUMMARY OF CLAIMED SUBJECT MATTER

An exemplary IT enterprise is illustrated in Figure 1A. The IT enterprise 150 includes local area networks 155, 160 and 165. IT enterprise further includes a variety of hardware and software components, such as workstations, printers, scanners, routers, operating systems, applications, and application platforms, for example. The components of IT enterprise 150 may be monitored and managed in accordance with the present disclosure. (Page 5, lines 16-21.)

The various components of an exemplary management system 100 topology that can manage an IT enterprise in accordance with the present disclosure are shown in Figure 1B. The management system 100 includes at least one visualization workstation 105, an object repository 110, one or more management applications 115, and one or more management agents 120 associated with each management application 115. (Page 4, lines 22-26.)

The visualization workstation 105 provides a user access to various applications including a network management application 115. Workstation 105 interacts with an object repository 110 which stores and delivers requests, commands and event notifications. Workstation 105 requests information from object repository 110, sends commands to the object repository, and gets notification of events, such as status changes or object additions from it. The object repository 110 receives request information from the management application 115, which is fed by the management agents 120 responsible for monitoring and managing certain components or systems in an IT enterprise. (Page 4, line 27 - page 5, line 4.)

The management application 115 maintains object repository 110 to keep track of the objects under consideration. The object repository 110 may be a persistent store to hold information about managed components or systems, such as a database. In an alternative embodiment, the management application 115 and object repository 110 may be integrated into a single unit that can hold information about managed components in volatile memory and perform the tasks of the management application. (Page 5, lines 5-10.)

As shown, one architectural aspect of the present system is that in normal operation, the visualization workstation 105 interacts primarily with the object repository 110. This reduces network traffic, improves the performance of graphical rendering at the workstation, and reduces the need for interconnectivity between the visualization workstation 105 and a multitude of management applications 115, their subsystems and agents 120 existing in IT

enterprises. Of course, embodiments having other configurations of the illustrated components are contemplated, including a stand-alone embodiment in which the components comprise an integrated workstation. (Page 5, lines 11-18.)

In addition to handling requests, commands and notifications, object repository 110 may also handle objects describing the structure and operation of the management system 100. Such objects may describe the momentary state, load, and performance of the components and/or systems. Such objects may be populated using a manual process or an automatic discovery utility. (Page 5, lines 19-23.)

According to one embodiment, the management system of the present disclosure includes an alert system that is capable of providing audio alerts to operators. Another embodiment of the management system of the present disclosure includes the alert system and a command/control system that is capable responding to verbal commands from devices that supports speech generation or reproduction. (Page 5, lines 24-28.)

The alert system includes an alert generation component that communicates with a speech generation component to provide speech-based audio alerts. The command/control system includes a speech recognition component that communicates with a command/control component (or user interface) to enable human operators to verbally request retrieval of information from the management system, or to verbally issue commands to the management system to take certain actions. This combined speech-based alert system and command/control system may be incorporated as part of the management application 115 of the management system 100 or as a user interface in any kind of component (e.g., computer) connected to the IT enterprise. In one embodiment, this is accomplished using speakers and a microphone, or in alternative configurations, using a headset with headphones and an integrated microphone. In alternative embodiments, the combined alert system and command/control system (collectively referred to herein as the ACC system) is connected to a telephony system, to allow alert messages to be sent out to an operator through a telephone and commands to be received through a telephone. In still other alternative embodiments, the speech-based system may be connected to a handheld device, such as a Palm Pilot. Of course, any handheld device used with the present system should be capable of supporting audio and/or speech generation. Thus, the present system is readily capable of exploiting any new devices supporting speech generation as they become available. (Page 5, line 29 - page 6, line 17.)

Referring now to Figure 2, one embodiment of an ACC system according to the present disclosure is shown. The alert system 107 includes alert generation component 205 and speech generation component 215 that interacts with devices 210-245, as described below, via router 220. The command/control system 108 includes command/control component 250 and speech recognition component 210 that interacts with devices 210-245, as described below, via router 220. Information can be stored in or retrieved from object repository 110 by alert generation component 205 or command control component 250. In this embodiment, at least a potion of the ACC system is integrated with the management application 115 and another portion of the ACC system is integrated with the object repository 110. In an alternative embodiment, the ACC system can be integrated with the management application 115, and in another alternative embodiment the ACC system can be integrated with the object repository 110 and another component in the IT enterprise. (Page 6, lines 18-30.)

In addition, in the embodiment of Figure 2, the alert system 107, the command/control system 108 or both interact with the devices 210-245 via a single communication path, e.g., router 220. This configuration provides a unified alerting system and a unified command-and-control system for various enterprise components, networks or subsystems in the IT enterprise. Further, like management application 115, other enterprise components, networks and/or subsystems may populate the object repository 110 with event notifications that may be delivered according to the methodology of the present application. (Page 7, lines 1-8.)

In conventional management systems subsystems are typically responsible for generating and delivering their own event notifications, and handling commands from operators (or users). For example, virus detection, intrusion detection, system performance monitoring, network monitoring, application monitoring, job scheduling, and access control are traditionally handled by separate subsystems with separate user interfaces and separate alerting systems. By providing an integrated user interface for reporting events and receiving commands in accordance with the present disclosure, management systems can more efficiently manage an enterprise, particularly with regard to the use of audio notifications and commands. (Page 7, lines 9-17.)

In addition to communicating event notifications to visualization workstation 105, object repository 110 further provides such notifications to the alert generation component 205. Alert generation component 205 processes each notification to determine whether an audio alert notification should be transmitted, and if so, determines how the alert is to be transmitted.

If the alert generation component 205 is configured to provide an audio alert notification for a particular event, alert generation component 205 employs speech generation component 215 to generate the audio alert notification. The audio alert notification is then transmitted via router 220 to any of a number of devices that support speech generation or reproduction. Such devices, for example, include without limitation telephone 225, pager 230, PDA 235, mobile telephone 240 and visualization workstation or computer 245. (Page 7, lines 18-28.)

Further, in addition to receiving requests and commands from visualization workstation 105, object repository 110 may receive requests and/or commands via command control component 250. Upon receiving an audio command from a device that supports speech generation or reproduction via router 220, speech recognition system 210 converts the audio command into command data that may operate as input to the command control component 250. The conversion of the audio command into command data may be accomplished using conventional speech processing techniques, know to one of ordinary skill in the art. As noted, speech recognition system 210 receives requests and/or commands in a verbal form from other devices, for example devices 225-245. Such commands may be in response to an alert generated by alert generation component 205. (Page 7, line 29 - page 8, line 9.)

Referring now to Figure 3, there is illustrated a flowchart describing the operation of one methodology for generating audio alerts. At block 305, an alert condition is detected within the IT enterprise. The alert condition may be detected by alert generation component 205 based on an event notification received from object repository 110. At block 310, alert generation component 205 determines a notification path associated with the detected alert condition. The notification path may direct that an alert be sent to one or more devices 210-245, and may be determined based on previous events, such as whether a prior alert has been generated without a response. (Page 8, lines 10-17.)

According to one embodiment of the present application, the determination of the notification path may be accomplished using a system for directing messages to different users depending on severity, type of object or any other parameter that may be the basis for filtering event notifications. Such a mechanism may be useful since many different types of messages, from many different contexts may be generated in a typical management system. A system for filtering messages is described in concurrently filed application entitled "Method and Apparatus for Filtering Messages Based on Context," which is incorporated herein in its entirety by reference. Further, the determination of the notification path may include

determining multiple paths to enable more than one user to be designated to receive a particular type of audio alert notification. (Page 8, lines 18-27.)

In addition to supporting the transmission of audio alert notifications to multiple users, the alert system 107 may also be configured to utilize an escalation list. An escalation list is a list of people to be notified for a particular class of message. The list may be stored in object repository 110, the management application 115, the alert generation component 205 or other storage facility. The list may be multi-tiered and may represent several levels of responsibility. For example, the list may include a first set of one or more operators who are primarily responsible for a particular alert, and a second set of one or more operators who are responsible if no one from the first set addresses the event within a particular period of time. Of course, the escalation list may be structured in a variety of ways, with any number of levels. (Page 8, line 28 - page 9, line 7.)

Given an escalation list with two operators, the list can be constructed, for example, such that if a first person on the escalation list does not respond to a phone message within five minutes, the second person on the list may be notified. In such an example, the alert system may deliver the following exemplary audio alert notification to a telephone associated with the second person: (Page 9, lines 8-12.)

"The NT server uschdb02 is predicted to begin thrashing within half an hour. We attempted to notify Sally Robinson, but she did not respond. You are responsible for handling this alert." (Page 9, lines 13-15.)

Some persons may be designated to be notified even if others have been given responsibility for handling a problem. For example, the alert system may deliver the following exemplary message to a manager: (Page 9, lines 17-19.)

"The NT server uschdb02 is predicted to begin thrashing within half an hour. This message is for information only. We have notified Bob Jones, who is the operator on duty and is responsible for handling this problem." (Page 9, lines 20-22.)

According to alternative embodiments of the present application, the management application 115 may include a facility for escalating the message to the next responsible manager if a problem is not addressed within a designated time limit, or if the same problem occurs several times within a designated time period. For example, the system may deliver the following message to the next responsible manager: (Page 9, lines 24-28.)

"The NT server uschdb02 has gone into thrashing three times within the past hour. We have notified Bob Jones, who is the operator on duty and is responsible for handling this problem." (Page 10, lines 1-3.)

The management system 100 may also be configured employ control logic for intelligently filtering and selectively providing audio alert notifications. Such filtering control logic may be useful to avoid an operating condition in which many audio alert notifications are provided within a narrow time period. In one embodiment, the system enables the user to define a personal filtering profile, so that only messages relevant to the user are sent. In alternative embodiments, the filtering may be based on one or more properties of the object(s) or alert message(s), including, for example, the type of the object(s), the name of the object(s) (including name patterns), the location of the object(s), the inclusion of the object in a business process view, as is described in commonly owned U.S. Patent Application Serial No. 09/545,024, filed April 7, 2000, which is incorporated herein in its entirety by reference. The filtering may also be based on the severity of the alert, the time of day, the level of risk in a predicted event, the importance of the object and/or the importance, severity, type, name, etc. of object(s) impacted by the problem, which is described in commonly owned, concurrently filed related U.S. Utility Patent Application entitled "Method and Apparatus for Filtering Messages Based on Content". (Page 10, lines 5-19.)

With continuing reference to Figure 3, at block 315, a notification message is constructed based, in part, on the parameters of the detected alert condition and other factors or conditions known in the art. The notification message may be constructed based on other additional factors. (Page 10, lines 20-23.)

In one embodiment of the present application, to facilitate user understanding of the audio alert notifications, some of the terms and names commonly used in an enterprise management system operator's lexicon may be modified. For example, an identifier for an operating system that is publicly known as "NT Server" may be stored in a database as the single word "NTServer", without any spaces separating the words. Such a single word identifier may be employed because many databases and programming languages do not permit spaces within an identifier. Further, users may use non-standard capitalization to aid in parsing non-standard words, and are adept at parsing such constructions even without the aid of capitalization. For example, "oraclev8" may be immediately recognized by an experienced user as referring to "Oracle Version 8". (Page 10, line 24 - page 11, line 3.)

The command/control system may incorporate a facility for storing, in the object repository 110 or in one or more other databases, a pronounceable version of technical names that a speech generation system cannot identify a word or phrase. Alternatively, user readable and pronounceable names, with the embedded spaces, may be utilized as the public names of components, and the command/control system automatically generates the internal, technically acceptable name. (Page 11, lines 4-9.)

At block 320, the audio characteristics of the notification message are defined based on the detected alert condition. Audio characteristics may include, for example, volume, panning, distortion and resolution. (Page 11, lines 10-12.)

When an operator sitting in front of a computer receives an audio alert notification through the computer's speaker system, the next step is often to navigate through the standard on-screen user interface to bring the relevant object up on screen, to allow further inspection of the situation. In typical user interfaces, such navigation may involve counter-intuitive clicking and scrolling. In some modern user interfaces, such as 3-D "virtual reality" views, infinitely pan able 2-D maps and hyperbolic trees, the navigation is a seamless movement in some direction. (Page 11, lines 13-19.)

According to one embodiment of the present application, to assist the user to immediately navigate to an object, speech generation component 215 may use stereo or surround-sound speakers to position the source of the sound in the right direction. If the operator is looking at a part of a map, and an alert message is presented from the right, it is natural to scroll the screen to the right. Consequently, the use of audio characteristics may enhance the utility of the present application. (Page 11, lines 20-25.)

At block 325, the notification message is output via the notification path. (Page 11, line 26.)

Referring now to Figures 2 and 4, the operation of one methodology for receiving an audio request/command will be described. At block 405, an audio request/command is received from a user. The audio request/command is received through router 220 by speech recognition component 210. The audio request/command is converted into command data (410) by speech recognition component 220. The resulting command data is then transmitted to command control component 250 for processing (415). (Page 11, line 27 - page 12, line 2.)

According to block 420, command control component 250 constructs a command based on the received command data. The command control component 250 transmits (425) the

generated command to object repository 110 where it is stored (430) until retrieved and executed by the network management application 115. (Page 12, lines 3-6.)

While the present disclosure has been described with reference to a network management application, the disclosed methodology and systems may also be applied to business applications such as order processing or credit validation which may be interfaced with a management system and to its alert management systems. Thus, in an alternate embodiment, if a business application generates alert messages when inventory levels get below a certain threshold or credit card fraud is detected, for example, then those messages can be delivered to any human manager through computer speakers, a telephone or other audio-based device. (Page 12, lines 7-14.)

It should also be appreciated that disclosed interface is not limited to operating in a single human language. Although alert notifications generated by management systems or applications are typically generated in a specific language, most often in English because of the domination of the IT industry by American companies, there are many multinational enterprises that use such systems which employ human operators who may speak other languages. Therefore, according to alternate embodiments of the present system, the system may include a facility for translating the message to a language designated for a specific recipient, and then generating the audio alert notification. (Page 12, lines 15-22.)

Accordingly, it is to be understood that the drawings and description in this disclosure are proffered to facilitate comprehension of the system, and should not be construed to limit the scope thereof. It should be understood that various changes, substitutions and alterations can be made without departing from the spirit and scope of the system. (Page 12, lines 23-27.)

It should be noted that this application is related to concurrently filed U.S. Non-Provisional Applications entitled "Method And Apparatus For Generating Context-Descriptive Messages" and "Method And Apparatus For Filtering Messages Based On Context" both of which are incorporated herein by reference in their entirety. This application is further related to U.S. Patent Nos. 5,958,012, 6,289,380 and 6,327,550, and co-pending U.S. Applications Serial Nos., 09/558,897, and 09/559,237, which are all incorporated in their entirety herein by reference. (Page 12, line 28 - page 13, line 4.)

Claim 1 recites:

A method for generating an audio alert and processing an audio command (e.g., Figure 3, reference numerals 305-325; Figure 4, reference numerals 405-430; Page 8, line 10 through Page 12, line 6), comprising:

detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems (e.g., Figure 3, reference numeral 305; Page 8, lines 10-13);

filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository (e.g., Figure 3, reference numeral 310; Page 8, line 10 through Page 10, line 19);

constructing an audio notification message based on at least one parameter associated with the alert condition (e.g., Figure 3, reference numerals 315 and 320; Page 8, lines 18-27; Page 10, line 20 through Page 11, line 25);

outputting the audio notification message via the notification path (e.g., Figure 3, reference numeral 325; Page 11, line 26);

receiving an audio command (e.g., Figure 4, reference numeral 405; Page 11, line 27 through Page 12, line 2);

processing the audio command to derive command data (e.g., Figure 4, reference numeral 410; Page 11, line 27 through Page 12, line 6);

constructing a command based on the command data (e.g., Figure 4, reference numeral 420; Page 11, line 27 through Page 12, line 6); and

storing the command in the object repository (e.g., Figure 4, reference numeral 430; Page 12, lines 4-6).

Claim 13 recites:

A system for generating an audio alert and processing an audio command (e.g., Figures 1A, 1B, and 2, reference numerals 100, 150, and 108; Page 4, line 16 through Page 8, line 19); the system comprising:

one or more memory units (e.g., Figures 1B and 2, reference numeral 110; Page 4, line 24 through Page 5, line 23; Page 6, lines 18-30); and

one or more processing units (e.g., Figures 1B and 2, reference numeral 115; Page 4, line 22 through Page 5, lines 10; Page 6, line 18 through Page 8, line 9) operable to:

detect an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations

performed by other application subsystems in the plurality of heterogeneous application subsystems (e.g., Figure 3, reference numeral 305; Page 8, lines 10-13);

filter the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository (e.g., Figure 3, reference numeral 310; Page 8, line 10 through Page 10, line 19);

construct an audio notification message based on at least one parameter associated with the alert condition (e.g., Figure 3, reference numerals 315 and 320; Page 8, lines 18-27; Page 10, line 20 through Page 11, line 25);

output the audio notification message via the notification path (e.g., Figure 3, reference numeral 325; Page 11, line 26);

receive an audio command (e.g., Figure 4, reference numeral 405; Page 11, line 27 through Page 12, line 2);

process the audio command to derive command data (e.g., Figure 4, reference numeral 410; Page 11, line 27 through Page 12, line 6);

construct a command based on the command data (e.g., Figure 4, reference numeral 420; Page 11, line 27 through Page 12, line 6); and

store the command in the object repository (e.g., Figure 4, reference numeral 430; Page 12, lines 4-6).

Claim 15 recites:

A computer-readable storage medium encoded with processing instructions for generating an audio alert and processing an audio command (e.g., Figures 1A, 1B, and 2, reference numerals 100, 110, and 115; Page 4, line 16 through Page 6, line 17; Page 11, line 27 through Page 12, line 14), including:

computer readable instructions for detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems (e.g., Figure 3, reference numeral 305; Page 8, lines 10-13);

computer readable instructions for filtering the alert condition to determine a notification path associated with the alert condition, the notification path determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository (e.g., Figure 3, reference numeral 310; Page 8, line 10 through Page 10, line 19);

computer readable instructions for constructing an audio notification message based on at least one parameter associated with the alert condition (e.g., Figure 3, reference numerals 315 and 320; Page 8, lines 18-27; Page 10, line 20 through Page 11, line 25);

computer readable instructions for outputting the audio notification message via the notification path (e.g., Figure 3, reference numeral 325; Page 11, line 26);

computer readable instructions for receiving an audio command (e.g., Figure 4, reference numeral 405; Page 11, line 27 through Page 12, line 2);

computer readable instructions for processing the audio command to derive command data (e.g., Figure 4, reference numeral 410; Page 11, line 27 through Page 12, line 6);

computer readable instructions for constructing a command based on the command data (e.g., Figure 4, reference numeral 420; Page 11, line 27 through Page 12, line 6); and

computer readable instructions for storing the command in the object repository (e.g., Figure 4, reference numeral 430; Page 12, lines 4-6).

Dependent Claim 3 incorporates the elements of Claim 1, and further recites the following:

wherein constructing an audio notification message includes identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym (e.g., Figure 3, reference numerals 315 and 320; Page 10, line 5 through Page 11, line 9).

Dependent Claim 19 incorporates the elements of Claim 1, and further recites the following:

the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and

the method further comprises assigning the level of responsibility to each of the one or more users based upon a type of object associated with the alert condition (e.g., Figure 3, reference numeral 310; Page 8, line 18 through Page 10, line 4).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Are Claims 1, 4, 13, 15, and 20 unpatentable over U.S. Patent No. 5,367,670 issued to Ward et al. ("*Ward*") in view of U.S. Patent No. 6,603,396 issued to Lewis et al. ("*Lewis*"), and further in view of U.S. Patent No. 5,745,692 to Lohmann II et al. ("*Lohmann*") under 35 U.S.C. § 103(a)?

Is Claim 3 unpatentable over *Ward*, *Lewis*, and *Lohmann* in view of U.S. Patent No. 6,037,099 to Sabourin, et al. ("*Sabourin*") under 35 U.S.C. § 103(a)?

Is Claim 19 unpatentable over *Ward*, *Lewis*, and *Lohmann*, and *Cote* in view of U.S. Patent Publication No. 2004/0210469 filed by Jones et al. ("*Jones*") under 35 U.S.C. § 103(a)?

Are Claims 5-11, 17-18, and 21-24 unpatentable over various combinations of *Ward*, *Lewis*, *Lohmann*, *Cote*, *Jones*, U.S. Patent No. 4,881,197 to Fischer ("*Fischer*"), U.S. Patent No. 6,421,707 to Miller, et al. ("*Miller*"), U.S. Patent No. 6,161,082 to Goldberg, et al. ("*Goldberg*"), U.S. Patent Publication No. 2001/0044840 filed by Carleton ("*Carleton*"), and U.S. Patent No. 6,185,613 to Lawson, et al. ("*Lawson*") under 35 U.S.C. § 103(a)?

ARGUMENTS

Claims 1, 3-11, 13, 15, and 17-24 are pending in the Application. Appellant respectfully requests reconsideration and allowance of all pending claims. Claims 2, 12, 14, and 16 have been cancelled. As explained below, Appellant believes all claims to be allowable over the cited references. Accordingly, Appellant submits that these rejections are improper and should be reversed by the Board. Appellant addresses independent Claims 1, 13, and 15 and dependent Claims 3, 5-11, 17-19, and 21-24 below.

I.   The Legal Standard for Obviousness

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. One of the three basic criteria that must be established by an Examiner to establish a *prima facie* case of obviousness is that "the prior art reference (or references when combined) must teach or suggest *all the claim limitations*." *See* M.P.E.P. § 706.02(j) citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added). "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." *See* M.P.E.P. § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970) (emphasis added).

In addition, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed below, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an Appellant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon Appellant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142.

The U.S. Supreme Court's decision in *KSR Int'l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007). The analysis

regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue "should be made explicit." *KSR*, 127 S.Ct. at 1740-41. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 1741 (internal quotations omitted).

The new examination guidelines issued by the PTO in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO's view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

II. Claims 1, 4, 13, 15, and 20 are allowable under 35 U.S.C. § 103(a) over the proposed *Ward-Lewis-Lohmann* combination

Independent Claim 1, as presented on Appeal, recites:

A method for generating an audio alert and processing an audio command, comprising:

detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the_plurality of heterogeneous application subsystems;

filtering the alert condition to determine a notification path associated with the alert condition, the notification path

> being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository;   .
>
>   constructing an audio notification message based on at least one parameter associated with the alert condition;
>
>   outputting the audio notification message via the notification path;
>
>   receiving an audio command;
>
>   processing the audio command to derive command data;
>
>   constructing a command based on the command data; and
>
>   storing the command in the object repository.

Appellant submits that the *Ward-Lewis-Lohmann* combination suggested by the Examiner fails to teach, suggest, or disclose each of these limitations.

A.   The cited references do not disclose *"filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition"* and *"outputting the audio notification message via the notification path."*

For example, the *Ward-Lewis-Lohmann* combination fails to teach, suggest, or disclose "filtering the alert condition to determine a notification path associated with the alert condition, **the notification path being determined <u>based at least on a property of an object</u> associated with the alert condition**" and then "outputting the audio notification message <u>via the notification path</u>." In the *Final Office Action*, the Examiner relies upon *Ward* as disclosing the "filtering" limitation. (*Final Office Action*, pp. 3-4 (citing Ward, col. 5, ll. 21-27)). However, the Examiner is incorrect. As stated above, Appellant's claim requires that a notification path be "determined based at least on a property of an object associated with the alert condition." The four "paths" in the cited portion of *Ward,* as identified by the Examiner, fail to satisfy this requirement.

Instead, *Ward* merely discloses:

> As may be seen in FIG. 2, the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored. Each system component

being monitored may be referred to as an object having a number of attributes.

(*Ward*, col. 5, ll. 21-27). "When the attributes exceed their boundary or threshold values, an alert will be generated." (*Ward*, col. 5, ll. 31-32). "Examples of alert conditions . . . include loss of system power, server subsystem failure, [and] excessive server temperature as well as other configurable events that require outside attention." (*Ward*, col. 7, ll. 19-24). Once it is determined that an alert should be issued, "an alert can be issued in a number of ways." (*Ward*, col. 7, ll. 25-27). In particular, the alert may be delivered "in-band" or "out-of-band." (*Ward*, at col. 7, ll. 28-29). More particularly, "out-of band" alerts may be delivered by "sending a protocol message over a switched telephone connection to the system manager facility 34, by dialing a phone number associated with a pager 56 or by dialing a phone number to a phone 58 associated with a person and generating a synthesized voice message upon completing a connection with the phone 58." (*Ward*, col. 7, ll. 50-57).

According to the Examiner, the methods of delivering these three "out-of-bound" alerts and the "in-band" alerts are the four paths referenced in col. 5, ll. 21-27 of *Ward*. (*Final Office Action*, p. 20). However, these four paths are not "notification paths" as recited in Claim 1. At best, *Ward* discloses that data may be gathered by one of four paths and then an alert message may be sent to a system manager. Nowhere does *Ward* disclose determination of a notification path "based at least on a property of an object associated with the alert condition," as recited in Claim 1. Instead, the mention of "paths" in *Ward* relates to "the path by which data accumulated during the monitoring of system components" depending on the particular type of failure. (*Ward*, col. 5, ll. 21-27). As such, the path disclosed in *Ward* does not relate to any "notification path," as recited in Claim 1. Moreover, this disclosure falls well short of teaching, suggesting, or disclosing that the paths are "determined **based at least on a property of an object** associated with the alert condition" as recited in Claim 1. Simply put, *Ward* fails to teach, suggest or disclose this limitation.

For at least this reason, the rejection of Claim 1 is improper.

    B.   **The cited references do not disclose "*the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or***

> *more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems.*"

As an additional distinction, the *Ward-Lewis-Lohmann* combination fails to teach, suggest, or disclose "the alert condition being detected in response to an event notification associated with at least one of **a plurality of heterogeneous application subsystems**, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are **distinct** from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems," as recited in Claim 1. In the *Final Office Action*, the Examiner relies upon the various system components monitored by system manager 22 of *Ward* for disclosure of the recited claim elements. (*Final Office Action*, pp. 3, 21). These system components include "server subsystems, asynchronous serial port, the computer system bus 13, and the intelligent disk array controller device 26." (*Final Office Action*, p. 21). However, these system components are not "heterogeneous application subsystems" as recited in Claim 1.

Claim 1 explicitly states that each heterogeneous application subsystem must "perform[] an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems." The system components in *Ward* cited by the Examiner fail to satisfy this limitation. In fact, the cited components are all part the same server 12 (the EISA server) shown in Figures 1 and 3 of *Ward*. As such, they do not perform distinct information technology management operations. Instead, they perform interrelated operations for the same EISA server.

For at least these additional reasons, the rejection of Claim 1 is improper.

C.   The Proposed *Ward-Lewis-Lohmann* Combination is Improper

Applicant respectfully submits that the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine *Ward*,

Lewis, and *Lohmann* in the manner the Examiner proposes. Applicant's claims are allowable for at least this additional reason.

> With respect to the proposed combination of *Lewis* with *Ward*, the Examiner states:

> It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Ward and Lewis because Lewis's teaching would allow Ward's system to filter irrelevant alarms in order to maximize performance and reliability of the system (col. 7, lines 59-65).

(*Final Office Action*, page 4) Thus, it appears that the Examiner has merely proposed an alleged advantage of combining *Ward* with *Lewis* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes).

However, the alleged advantage of the system disclosed in *Lewis* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (***without using Applicant's disclosure or claims as a guide***) to modify the particular techniques disclosed in *Ward* with the cited disclosure in *Lewis*; and (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so. Indeed, if it were sufficient for an Examiner to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine of modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that is not the law.

Moreover, in the *Final Office Action*, the Examiner states, "Specifically, Lewis' teaching of filtering out and discarding irrelevant alarms would the performance and reliability of only relevant alarms being passed." (*Final Office Action*, page 22). It is not clear to Applicant how this statement even relates the manner in which the Examiner is attempting to combine these references or to Applicant's claims. In the rejection, the Examiner appears to be using *Lewis* as allegedly disclosing "filtering the alert condition to determine a notification path," as recited in Claim 1. It is not clear to Applicant how "filtering out and discarding irrelevant alarms" to purportedly achieve some improved performance and reliability has anything to do with the particular teachings the Examiner is trying to combine with *Ward*. More specifically, even assuming for the sake of argument

only that *Lewis* discloses "filtering an alert condition to determine a notification path associated with the alert condition," as argued by the Examiner, it is entirely unclear why the alleged motivation of "maximizing performance and reliability of the system" would lead one of ordinary skill in the art at the time of Applicant's invention to incorporate the teaching of "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught in *Lewis*, into the system of *Ward*. In other words, it is not clear how the alleged advantage of "maximizing performance and reliability of the system" would even be achieved by modifying the system of *Ward* to include "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught by *Lewis*. Thus, Applicant maintains that it is entirely unclear and unexplained how the purported advantage even relates to the teachings that the Examiner is combining.

Accordingly, the Examiner has not demonstrated an adequate reason to combine *Ward* and *Lewis*. Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements for demonstrating a *prima facie* case of obviousness. Rather, the Examiner's attempt to combine *Lewis* with *Ward* appears to constitute the type of impermissible hindsight reconstruction of Appellant's claims, using Appellant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Applicant respectfully submits that the proposed *Ward-Lewis-Lohmann* combination is improper. Independent Claims 1, 13, and 15 and their dependent claims are allowable for at least this additional reason.

D. Conclusions

Appellant has shown above that the proposed *WardLewis-Lohmann* combination does not disclose, teach, or suggest at least two claim limitations recited in Appellant's Claim 1. Additionally, Appellant has shown that the proposed combination of references is improper. Accordingly, Appellant respectfully requests that the rejection of Claim 1 (together with Claims 4 and 20 that depend from Claim 1) be withdrawn. Similar to Claim 1, Claims 13 and 15 each recite "a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition" and "a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more

information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems." Therefore, Appellant submits that Claims 13 and 15 are allowable at least for reasons similar to those discussed above with regard to Claim 1.

III.   Claim 3 is allowable under 35 U.S.C. § 103(a) over the proposed *Ward-Lewis-Lohmann-Sabourin* combination

Claim 3 depends from independent Claim 1, which Appellant has shown above to be allowable over the proposed *Ward-Lewis-Lohmann* combination, and is allowable for at least this reason.

A.   The cited references do not disclose the elements of Claim 3

First, Claim 3 recites further patentable distinctions over the proposed combination of references.

For example, Claim 3 recites:

> wherein constructing an audio notification message includes identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym.

Appellant submits that the *Ward-Lewis-Lohmann-Soubourin* combination suggested by the Examiner fails to teach, suggest, or disclose each of these limitations.

In the *Final Office Action*, the Examiner acknowledges that *Ward*, *Lewis*, and *Lohmann* fail to disclose these limitations and instead argues that *Sabourin* teaches these limitations. (*Final Office Action*, pages 9-10). In particular, the Examiner cites column 10, line 60 through column 11, line 8 of *Sabourin* as allegedly teaching the limitations of Claim 3. (*Final Office Action*, page 10). However, the cited portion of *Sabourin* actually relates to computer recognition of human speech and an associated confusability tool that appears to be the subject of the alleged invention in *Sabourin*. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8). The cited portion discloses that there is some flexibility in the selection of the lexicon the computer is

trained to recognize. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8). According to *Sabourin*, the confusability tool may be used to automatically find word pairings that tend to cause high confusability, and a designer can replace the relevant orthographies with alternate synonyms. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8). *Sabourin* further discloses that the simplification of a lexicon by replacing confusable words with non-confusable synonyms can be useful by facilitating understanding across a communication medium and for creating a confusable test lexicon to rigorously test a speech recongizer. (*Sabourin*, Col. 10, l. 60 through Col. 11, l. 8).

However, nowhere does the cited portion disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym, as recited in Claim 3. The cited portions of *Sabourin* relate to computer recognition of human speech; they do not disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym. Accordingly, *Sabourin* and the proposed *Ward-Lewis-Lohmann-Sabourin* combination does not disclose, teach, or suggest that "constructing an audio notification message includes identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym," as recited in Appellant's Claim 3.

For at least this reason, the rejection of Claim 3 is improper.

B.   The Proposed *Ward-Lewis-Lohmann-Sabourin* Combination is Improper

Applicant respectfully submits that the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine *Ward*, *Lewis*, *Lohmann*, and *Sabourin* in the manner the Examiner proposes. Applicant's claims are allowable for at least this additional reason.

With respect to the proposed combination of *Lewis* with *Ward* as relating to the independent claim from which Claim 3 depends, the Examiner states:

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Ward and Lewis because Lewis's teaching would allow Ward's system to filter irrelevant alarms in order to maximize performance and reliability of the system (col. 7, lines 59-65).

(*Final Office Action*, page 4) Thus, it appears that the Examiner has merely proposed an alleged advantage of combining *Ward* with *Lewis* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes).

However, the alleged advantage of the system disclosed in *Lewis* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (*without using Applicant's disclosure or claims as a guide*) to modify the particular techniques disclosed in *Ward* with the cited disclosure in *Lewis*; and (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so. Indeed, if it were sufficient for an Examiner to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine of modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that is not the law.

Moreover, in the *Final Office Action*, the Examiner states, "Specifically, Lewis' teaching of filtering out and discarding irrelevant alarms would the performance and reliability of only relevant alarms being passed." (*Final Office Action*, page 22). It is not clear to Applicant how this statement even relates the manner in which the Examiner is attempting to combine these references or to Applicant's claims. In the rejection, the Examiner appears to be using *Lewis* as allegedly disclosing "filtering the alert condition to determine a notification path," as recited in Claim 1. It is not clear to Applicant how "filtering out and discarding irrelevant alarms" to purportedly achieve some improved performance and reliability has anything to do with the particular teachings the Examiner is trying to combine with *Ward*. More specifically, even assuming for the sake of argument only that *Lewis* discloses "filtering an alert condition to determine a notification path associated with the alert condition," as argued by the Examiner, it is entirely unclear why the alleged motivation of "maximizing performance and reliability of the system" would lead one

of ordinary skill in the art at the time of Applicant's invention to incorporate the teaching of "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught in *Lewis*, into the system of *Ward*. In other words, it is not clear how the alleged advantage of "maximizing performance and reliability of the system" would even be achieved by modifying the system of *Ward* to include "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught by *Lewis*. Thus, Applicant maintains that it is entirely unclear and unexplained how the purported advantage even relates to the teachings that the Examiner is combining.

Accordingly, the Examiner has not demonstrated an adequate reason to combine *Ward* and *Lewis*. Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements for demonstrating a *prima facie* case of obviousness. Rather, the Examiner's attempt to combine *Lewis* with *Ward* appears to constitute the type of impermissible hindsight reconstruction of Appellant's claims, using Appellant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Applicant respectfully submits that the proposed *Ward-Lewis-Lohmann* combination is improper. Dependent Claim 3 is allowable for at least these additional reasons.

C.   Conclusions

Appellant has shown above that the proposed *Ward-Lewis-Lohmann-Sabourin* combination does not disclose, teach, or suggest the limitations recited in Appellant's Claim 3. Additionally, Appellant has shown that the proposed combination of references is improper. Accordingly, Appellant respectfully requests that the rejection of Claim 3 be withdrawn.

IV.   Claim 19 is allowable under 35 U.S.C. § 103(a) over the proposed *Ward-Lewis-Lohmann-Sabourin* combination

Claim 19 depends from independent Claim 1, which Appellant has shown above to be allowable over the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination, and is allowable for at least this reason.

A.   The cited references do not disclose the elements of Claim 19

First, Claim 19 recites further patentable distinctions over the proposed combination of references. For example, Claim 19 recites:

- the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and
- the method further comprises assigning the level of responsibility to each of the one or more users *based upon a type of object associated with the alert condition.*

Appellant submits that the *Ward-Lewis-Lohmann-Cote-Jones* combination suggested by the Examiner fails to teach, suggest, or disclose each of these limitations.

As allegedly disclosing the second limitation, the Examiner cites *Jones*, stating that *Jones* "teaches assigning the level of responsibility to each of the one or more users based upon the severity of the alert condition (i.e., type of object associated with the alert condition)." (*Final Office Action*, page 13). Appellant respectfully submits, however, that the severity of the alert condition cannot be equated with the "type of object associated with the alert condition," as it is recited in Claim 19. It appears that the Examiner has rejected Claim 19 under the same basis that Claim 18 is rejected. As such, Appellant submits that the Examiner is not giving credence to each element of Appellant's Claim 19. The M.P.E.P. provides that "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970)). Whereas Claim 18 recites that the level of responsibility is assigned "based upon the severity of the alert condition," Claim 19 specifically recites that the level of responsibility is assigned "based upon the type of object associated with the alert condition." Thus, rejection of Claim 19 is improper at least because the Examiner has not given consideration to the particular claim elements recited in Claim 19.

Additionally, as purportedly disclosing the "object" recited in Applicant's claims, the Examiner relies on the objects disclosed in *Ward*, which appear to represent system components. Now, in rejecting Claim 19, the Examiner improperly modifies what is being mapped to the claimed "object." Respectfully, this type of inconsistency is no doubt the

result of attempting to combine disjointed portions of too many references in an attempt to recreate Applicant's claims through hindsight. The cited portion of *Jones* does not disclose, teach, or suggest "assigning the level of responsibility to each of the one or more users *based upon a type of object associated with the alert condition*," as recited in Claim 19.

Appellant reiterates that "[t]o establish *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art." M.P.E.P. § 2143.03 (emphasis added). "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. 2143.03 (emphasis added). It does not appear to Applicant that the cited portions of the proposed *Ward-Lewis-Lohmann-Cote-Jones* discloses, teaches, or suggests, at a minimum, "assigning the level of responsibility to each of the one or more users based upon a type of object associated with the alert condition," as recited in Claim 19.

For at least this reason, the rejection of Claim 3 is improper.

B.   The Proposed   *Ward-Lewis-Lohmann-Cote-Jones* Combination is
      Improper

Applicant respectfully submits that the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine *Ward*, *Lewis*, *Lohmann*, *Cote*, and *Jones* in the manner the Examiner proposes. Applicant's claims are allowable for at least these additional reasons.

With respect to the proposed combination of *Lewis* with *Ward* as relating to the independent claim from which Claim 3 depends, the Examiner states:

> It would have been obvious to one having ordinary skill in the art at the time
> of the invention was made to combine the teachings of Ward and Lewis
> because Lewis's teaching would allow Ward's system to filter irrelevant
> alarms in order to maximize performance and reliability of the system (col. 7,
> lines 59-65).

(*Final Office Action*, page 4) Thus, it appears that the Examiner has merely proposed an alleged advantage of combining *Ward* with *Lewis* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes).

However, the alleged advantage of the system disclosed in *Lewis* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (*without using Applicant's disclosure or claims as a guide*) to modify the particular techniques disclosed in *Ward* with the cited disclosure in *Lewis*; and (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so. Indeed, if it were sufficient for an Examiner to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine of modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that is not the law.

Moreover, in the *Final Office Action*, the Examiner states, "Specifically, Lewis' teaching of filtering out and discarding irrelevant alarms would the performance and reliability of only relevant alarms being passed." (*Final Office Action*, page 22). It is not clear to Applicant how this statement even relates the manner in which the Examiner is attempting to combine these references or to Applicant's claims. In the rejection, the Examiner appears to be using *Lewis* as allegedly disclosing "filtering the alert condition to determine a notification path," as recited in Claim 1. It is not clear to Applicant how "filtering out and discarding irrelevant alarms" to purportedly achieve some improved performance and reliability has anything to do with the particular teachings the Examiner is trying to combine with *Ward*. More specifically, even assuming for the sake of argument only that *Lewis* discloses "filtering an alert condition to determine a notification path associated with the alert condition," as argued by the Examiner, it is entirely unclear why the alleged motivation of "maximizing performance and reliability of the system" would lead one of ordinary skill in the art at the time of Applicant's invention to incorporate the teaching of "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught in *Lewis*, into the system of *Ward*. In other words, it is not clear how the alleged advantage of "maximizing performance and reliability of the system" would even be achieved by modifying the system of *Ward* to include "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught by *Lewis*. Thus, Applicant maintains that it is entirely unclear and unexplained how the purported advantage even relates to the teachings that the Examiner is combining.

Accordingly, the Examiner has not demonstrated an adequate reason to combine *Ward* and *Lewis*.

Furthermore, Appellant respectfully notes that to reject Appellant's claim, the Examiner pieces together bits and pieces of five separate references. Even if the cited references disclose the elements alleged by the Examiner (which Appellant does not admit and has expressly disputed above), such a piecemeal rejection of Appellant's claim language fails to give credence to the particular combination of features recited in Appellant's claim. Appellant respectfully submits that a rejection of Claim 19 under the *Ward-Lewis-Lohmann-Cote-Jones* combination, in the manner provided by the Examiner, can only result from piecing together disjointed portions of five unrelated references to reconstruct Applicants' claims with the benefit of hindsight.

The Federal Circuit has made clear that is improper for an Examiner to use hindsight having read the Applicant's disclosure to arrive at an obviousness rejection. *In re* Fine, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). It is improper to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re* Fritch, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In this case, Appellant respectfully submits that the Examiner has used Appellant's claimed invention as an instruction manual to combining the teachings of *Ward, Lewis, Lohmann, Cote*, and *Jones* to conclude that the references disclose the elements of Claim 19. Because the hindsight reconstruction of Appellant's claim is improper, Claim 19 is allowable over the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination.

Appellant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements for demonstrating a *prima facie* case of obviousness. Rather, the Examiner's attempt to combine *Lewis* with *Ward* appears to constitute the type of impermissible hindsight reconstruction of Appellant's claims, using Appellant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Appellant respectfully submits that the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination is improper. Dependent Claim 19 is allowable for at least these additional reasons.

C.   Conclusions

Appellant has shown above that the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination does not disclose, teach, or suggest the limitations recited in Appellant's Claim 19. Additionally, Appellant has shown that the proposed combination of references is improper. Accordingly, Appellant respectfully requests that the rejection of Claim 19 be withdrawn.

V.   Claims 5-11, 17-18, and 21-24 are allowable under 35 U.S.C. § 103(a) over the various combinations of *Ward*, *Lewis*, *Lohmann*, *Cote*, *Jones*, *Fischer*, *Miller*, *Goldberg*, *Carleton*, and *Lawson* under 35 U.S.C. § 103(a)?

Claims 5-11, 17-18, and 21-24 depend from independent Claim 1, which Appellant has shown above to be allowable over the proposed *Ward-Lewis-Lohmann* combination. Claims 5-11, 17-18, and 21-24 are allowable for at least because the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine the cited references in the manner the Examiner proposes. Applicant's claims are allowable for at least these additional reasons.

With respect to the proposed combination of *Lewis* with *Ward* as relating to the independent claim, the Examiner states:

> It would have been obvious to one having ordinary skill in the art at the time
> of the invention was made to combine the teachings of Ward and Lewis
> because Lewis's teaching would allow Ward's system to filter irrelevant
> alarms in order to maximize performance and reliability of the system (col. 7,
> lines 59-65).

(*Final Office Action*, page 4) Thus, it appears that the Examiner has merely proposed an alleged advantage of combining *Ward* with *Lewis* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes).

However, the alleged advantage of the system disclosed in *Lewis* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (*without using Applicant's disclosure or claims as a guide*) to modify the particular techniques disclosed in *Ward* with the cited disclosure in *Lewis*; and (2)

how one of ordinary skill in the art at the time of Applicant's invention would have actually done so. Indeed, if it were sufficient for an Examiner to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine of modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that is not the law.

Moreover, in the *Final Office Action*, the Examiner states, "Specifically, Lewis' teaching of filtering out and discarding irrelevant alarms would the performance and reliability of only relevant alarms being passed." (*Final Office Action*, page 22). It is not clear to Applicant how this statement even relates the manner in which the Examiner is attempting to combine these references or to Applicant's claims. In the rejection, the Examiner appears to be using *Lewis* as allegedly disclosing "filtering the alert condition to determine a notification path," as recited in Claim 1. It is not clear to Applicant how "filtering out and discarding irrelevant alarms" to purportedly achieve some improved performance and reliability has anything to do with the particular teachings the Examiner is trying to combine with *Ward*. More specifically, even assuming for the sake of argument only that *Lewis* discloses "filtering an alert condition to determine a notification path associated with the alert condition," as argued by the Examiner, it is entirely unclear why the alleged motivation of "maximizing performance and reliability of the system" would lead one of ordinary skill in the art at the time of Applicant's invention to incorporate the teaching of "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught in *Lewis*, into the system of *Ward*. In other words, it is not clear how the alleged advantage of "maximizing performance and reliability of the system" would even be achieved by modifying the system of *Ward* to include "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught by *Lewis*. Thus, Applicant maintains that it is entirely unclear and unexplained how the purported advantage even relates to the teachings that the Examiner is combining. Accordingly, the Examiner has not demonstrated an adequate reason to combine *Ward* and *Lewis*.

Furthermore, Appellant respectfully notes that to reject Appellant's dependent claims, the Examiner pieces together bits and pieces of ten separate references. Even if the cited

references disclose the elements alleged by the Examiner (which Appellant does not admit and has expressly disputed above), such a piecemeal rejection of Appellant's claim language fails to give credence to the particular combination of features recited in Appellant's claim. Appellant respectfully submits that a rejection of Claims 5, 6, 7, 8, 9, 10, 11, 17, 18, and 21-24 under the proposed combinations, in the manner provided by the Examiner, can only result from piecing together disjointed portions of ten unrelated references to reconstruct Appellant's claims with the benefit of hindsight.

The Federal Circuit has made clear that is improper for an Examiner to use hindsight having read the Applicant's disclosure to arrive at an obviousness rejection. *In re* Fine, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). It is improper to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re* Fritch, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In this case, Appellant respectfully submits that the Examiner has used Appellant's claimed invention as an instruction manual to combining the teachings of *Ward, Lewis, Lohmann, Cote, Jones, Fischer, Miller, Goldberg, Carleton,* and *Lawson* to conclude that the references disclose the elements of Claims 5-11, 17-18, and 21-24. Because the hindsight reconstruction of Appellant's claim is improper, Claims 5-11, 17-18, and 21-24 str allowable over the proposed combinations of references.

Appellant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements for demonstrating a *prima facie* case of obviousness. Rather, the Examiner's attempt to combine *Lewis* with *Ward* appears to constitute the type of impermissible hindsight reconstruction of Appellant's claims, using Appellant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Appellant respectfully submits that the proposed *Ward, Lewis, Lohmann, Cote, Jones, Fischer, Miller, Goldberg, Carleton,* and *Lawson* combinations are improper.

Appellant has shown above that the cited references do not disclose, teach, or suggest the limitations recited in Appellant's Claims 5-11, 17-18, and 21-24. Additionally, Appellant has shown that the proposed combination of references is improper. Accordingly, Appellant respectfully requests that the rejection of Claims 5-11, 17-18, and 21-24 be withdrawn.
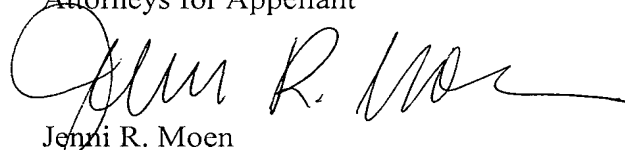
CONCLUSION

Appellant has demonstrated that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellant respectfully requests the Board to reverse the final rejections and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

The Commissioner is hereby authorized to charge $540.00 for filing this Brief in support of an Appeal to Deposit Account No. 02-0384 of Baker Botts, L.L.P. No other fees are believed due; however, the Commissioner is authorized to charge any additional fees or credits to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Appellant

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Dated: August 26, 2009

Correspondence Address:

at Customer No.   **05073**

APPENDIX A

Pending Claims

1.   A method for generating an audio alert and processing an audio command, comprising:

detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems;

filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository;

constructing an audio notification message based on at least one parameter associated with the alert condition;

outputting the audio notification message via the notification path;

receiving an audio command;

processing the audio command to derive command data;

constructing a command based on the command data; and

storing the command in the object repository.

3.   The method of Claim 1, wherein constructing an audio notification message includes identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym.

4.   The method of Claim 1, wherein detecting an alert condition includes detecting an alert condition within a plurality of subsystems of a network management application.

5.   The method of Claim 1, further comprising defining at least one audio characteristic associated with the audio notification message.

6.   The method of Claim 5, wherein the audio characteristic is a volume.

7.   The method of Claim 5, wherein the audio characteristic is a balance.

8.   The method of Claim 1, wherein the audio notification message is presented in accordance with a filter.

9.   The method of Claim 1, wherein:

the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition;

the determining the multi-tiered notification path includes determining the multi-tiered notification path, the determining the multi-tiered notification path including analyzing a parameter associated with the alert condition and selecting at least one tier of the notification path based on the parameter; and

the audio notification message is output via the at least one tier of the multi-tiered notification path.

10.   The method of Claim 9, wherein determining the multi-tiered notification path includes analyzing an escalation list.

11.   The method of Claim 1, wherein constructing the audio notification message includes:

determining a user associated with the audio notification message;
determining a language preference associated with the user; and
constructing the audio message based on the language preference.

13.   A system for generating an audio alert and processing an audio command; the system comprising:

one or more memory units; and

one or more processing units operable to:

detect an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems;

filter the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository;

construct an audio notification message based on at least one parameter associated with the alert condition;

output the audio notification message via the notification path;

receive an audio command;

process the audio command to derive command data;

construct a command based on the command data; and

store the command in the object repository.

15.   A computer-readable storage medium encoded with processing instructions for generating an audio alert and processing an audio command, including:

computer readable instructions for detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems;

computer readable instructions for filtering the alert condition to determine a notification path associated with the alert condition, the notification path determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository;

computer readable instructions for constructing an audio notification message based on at least one parameter associated with the alert condition;

computer readable instructions for outputting the audio notification message via the notification path;

computer readable instructions for receiving an audio command;

computer readable instructions for processing the audio command to derive command data;

computer readable instructions for constructing a command based on the command data; and

computer readable instructions for storing the command in the object repository.

17.   The method of Claim 1, wherein:

the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and

the method further comprises identifying the occurrence of a prior alert condition that was not responded to, the multi-tier notification path being determined based at least in part on the occurrence of the prior alert condition.

18.   The method of Claim 1, wherein:

the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and

the method further comprises assigning the level of responsibility to each of the one or more users based upon the severity of the alert condition.

19.   The method of Claim 1, wherein:

the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and

the method further comprises assigning the level of responsibility to each of the one or more users based upon a type of object associated with the alert condition.

20.   The method of Claim 1, further comprising constructing an additional audio notification message if the audio notification message is not responded to within a designated time limit.

21.   The method of Claim 1, further comprising constructing an additional audio notification message if the alert condition is not addressed within a designated time limit.

22.   The method of Claim 1, wherein:

the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition;

the audio notification message is output via the at least one tier of the multi-tiered notification path; and

the method further comprises filtering the audio notification message such that at least one user on the multi-tiered notification path does not receive the audio notification message.

23.   The method of Claim 22, wherein filtering the audio notification message comprises filtering the audio notification message based on a property associated with an object associated with the alert condition.

24.   The method of Claim 23, wherein the property is selected from the group consisting of a type of the object, a name of the object, a location of the object, the severity of the alert condition, the time of day, a level of risk, and an importance assigned to the object.

APPENDIX B

Evidence Appendix

Other than the references attached to this Appeal Brief as Appendices A and B, no evidence was submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, and no other evidence was entered by the Examiner and relied upon by Appellant in the Appeal.

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APPENDIX C

Related Proceedings Appendix

As stated on Page 3 of this Appeal Brief, Appellant has identified two appeals that may be related to or that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of the Appeal Briefs filed in 10/091,065 and 09/949,101 are attached.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES

In re Application of: Anders Vinberg

Serial No.:   10/091,065

Filing Date: March 4, 2002

Group Art Unit: 2452

Examiner: Philip C. Lee

Confirmation No.:   8010

Title: METHOD AND APPARATUS FOR GENERATING CONTEXT-
                            DESCRIPTIVE MESSAGES

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

APPEAL BRIEF

Appellant has appealed to the Board of Patent Appeals and Interferences ("*Board*") from the Final Office Action dated February 10, 2009 ("*Final Office Action*") and the Advisory Action dated April 21, 2009. Appellant filed a Notice of Appeal and Pre-Appeal Brief on May 8, 2009 with the statutory fee of $540.00. This Appeal Brief is filed in response to Notice of Panel Decision from Pre-Appeal Brief Review dated July 30, 2009, finally rejecting Claims 1, 3-9, 11, 13-20, and 31-36.

REAL PARTY IN INTEREST

This Application is currently owned by Computer Associates Think, Inc. as indicated by:

an assignment recorded on 11/25/2002 from inventor Anders Vinberg to Computer Associates Think, Inc., in the Assignment Records of the PTO at Reel 013520, Frame 0080 (4 pages).

RELATED APPEALS AND INTERFERENCES

Appellant identifies the following appeal that may be related to or that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appn. Ser. No.:	10/091,067
Priority Info:	Claims the benefit of 08/892,919
Appellant:	Anders Vinberg
Represented by:	Baker Botts LLP
Assignee:	Computer Associates Think, Inc. (pursuant to assignment recorded at reel 013520, Frame 0528)
Status:	Appeal Brief to be submitted by Applicant on or before due August 30, 2009

Appellant additionally identifies the following appeal that may be related to or that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No.:	2009-011165
Appn. Ser. No.:	09/949,101
Priority Info:	Claims the benefit of 08/892,919
Appellant:	Reuven (nmi) Battat, et al.
Represented by:	Baker Botts LLP
Assignee:	Computer Associates Think, Inc. (pursuant to assignment recorded at reel 012161, frame 0483)
Status:	Reply Brief submitted on December 30, 2008; awaiting decision of Board of Patent Appeals and Interferences

STATUS OF CLAIMS

Claims 1, 3-9, 11, 13-20, and 33-36 are pending and stand rejected pursuant to a Final Office Action dated February 10, 2009 (*"Final Office Action"*) and a Notice of Panel Decision from Pre-Appeal Brief Review dated July 30, 2009 (*"Panel Decision"*). Specifically, the *Final Office Action* includes the following rejections:

1.   Claims 1, 3-5, 9, 11, 13-15 and 33-36 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,125,390 issued to Touboul (*"Touboul"*) and U.S. Patent No. 6,049,828 issued to Dev et al. (*"Dev"*) in view of U.S. Patent No. 5,761,502 issued to Jacobs (*"Jacobs"*).

2.   Claims 6 and 16 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 6,011,838 to Cox (*"Cox"*).

3.   Claims 7 and 17 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 5,748,098 to Grace (*"Grace"*).

4.   Claims 8 and 18 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 6,006,016 to Faigon et al. (*"Faigon"*).

5.   Claims 19-20 and 31-32 under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 5,933,601 to Fanshier (*"Fanshier"*).

Claim 37 was added in the Response to Final Office Action submitted by Appellant on April 9, 2009 (*"Response to Final"*). However, the amendment has not been entered.

For the reasons discussed below, Appellant respectfully submits that the rejections of Claims 1, 3-9, 11, 13-20, and 33-36 are improper and should be reversed by the Board. Accordingly, Appellant presents Claims 11, 3-9, 11, 13-20, and 33-36 for Appeal. All pending claims are shown in Appendix A, attached hereto.

STATUS OF AMENDMENTS

In the Response to Final Office Action submitted by Appellant on April 9, 2009 (*"Response to Final"*), Appellant amended the claims by adding a new Claim 37 to depend from Claim 1. In the Advisory Action delivered on April 21, 2009 (*"Advisory Action"*), the Examiner refused to enter the amendment because such amendment would "raise new issues that would require further consideration and/or search." (*Advisory Action*, pages 1-2). Claim 37 and its status as "Not Entered" is shown in Appendix A, attached hereto.

All other amendments submitted by Appellant have been entered by the Examiner.

SUMMARY OF CLAIMED SUBJECT MATTER

An exemplary IT enterprise is illustrated in Figure 1A. The IT enterprise 150 includes local area networks 155, 160 and 165. IT enterprise 150 further includes a variety of hardware and software components, such as workstations, printers, scanners, routers, operating systems, applications, and application platforms, for example. Each component of IT enterprise 150 may be monitored and managed in accordance with the present disclosure. (Page 4, lines 10-15.)

The various components of an exemplary management system 100 topology that can manage an IT enterprise in accordance with the present disclosure are shown in Figure 1B. The management system 100 includes at least one visualization workstation 105, an object repository 110, one or more management applications 115, and one or more management agents 120 associated with each management application 115. (Page 4, lines 16-20.)

The visualization workstation 105 provides a user access to various applications including a network management application 115. Workstation 105 interacts with an object repository 110 which stores and delivers requests, commands and event notifications. Workstation 105 requests information from object repository 110, sends commands to the object repository, and gets notification of events, such as status changes or object additions from it. The object repository 110 receives request information from the management application 115, which is fed by the management agents 120 responsible for monitoring and managing certain components or systems in an IT enterprise. (Page 4, lines 21-28.)

The management application 115 maintains object repository 110, in part, to keep track of the objects under consideration. The object repository 110 may be a persistent store to hold information about managed components or systems, such as a database. In an alternative embodiment, the management application 115 and object repository 110 may be integrated into a single unit such as a computer processing system that can hold information about managed components in, for example, a volatile memory and perform the tasks of the management application using, for example, the one or more processors (e.g., a management application processor) operable with logic encoded on a storage medium to execute the management applications. (Page 4, line 29 - page 5, line 4.)

As shown, one architectural aspect of the present system is that in normal operation, the visualization workstation 105 interacts primarily with the object repository 110. This reduces

network traffic, improves the performance of graphical rendering at the workstation, and reduces the need for interconnectivity between the visualization workstation 105 and a multitude of management applications 115, their subsystems and agents 120 existing in the IT enterprises. Of course, embodiments having other configurations of the illustrated components are contemplated, including a stand-alone embodiment in which the components comprise an integrated workstation. (Page 5, lines 5-12.)

In addition to handling requests, commands and notifications, object repository 110 may also handle objects describing the structure and operation of the management system 100. Such objects may describe the momentary state, load, and performance of the components and/or systems. Such objects may be populated using a manual process or an automatic discovery utility. (Page 5, lines 13-17.)

Referring now to Figure 2, components forming one embodiment of an alert system according to the present disclosure are shown. Management application 115 includes an alert system 200 for detecting and reporting alert conditions pertaining to managed components of the IT enterprise 150. The alert system 200 includes alert condition detection module 205 which oversees the status of system components by analyzing database 215, containing system objects that define the topology of the system. Through analysis of the system objects of database 215, alert condition detection module 205 may identify an actual or potential alert condition. Upon identifying an alert condition, module 205 generates an alert condition object and stores it in database 210. Alert notification module 220 periodically analyzes the alert condition objects of database 210, and reports relevant alert conditions represented by the objects. (Page 5, lines 18-28.)

Alert system 200 also includes an alert dialog manager 225 for generating messages that describe a context of a system object that is the subject of a reported alert condition of the managed system. In one embodiment, the context description may be provided as a result of one or more dialog requests received by alert dialog manager 225 from an operator, as illustrated by Figure 2. In an alternative embodiment, the alert notification module 220 and alert dialog manager 225 may be integrated, and the context description may be provided concurrently with an alert notification. (Page 5, line 29 - page 6, line 5.)

The context description of system object subject to an alert condition may include the physical location of the associated system component, the logical relationship of the system object to other system objects, the operating status of the system object, the business

process(es) associated with the system object, the interest/business groups associated with the system object. (Page 6, lines 6-10.)

Referring now to Figure 3, there is illustrated an exemplary flow diagram of methodology for reporting the context associated with an alert condition in accordance with one embodiment of the present disclosure. At block 305, an alert condition is detected. The alert condition may be an existing condition that requires operator attention, a warning regarding an existing condition or a predicted/potential condition that may require operator attention. Any technique known to those of skill in the art may be used in the detection of actual or potential alert conditions. (Page 6, lines 11-17.)

At block 310, an alert condition notification is generated. The notification may be embodied as text, motion video, audio or any other means for providing an alert. The alert condition notification may include an identification of the alert condition and/or a component of the system that is the subject of the alert. The alert condition notification is output to an operator at block 315. (Page 6, lines 18-22.)

At block 320, a determination is made whether a request to provide a description of the context of the alert has been received. If such a request has been received, the system continues processing at block 325. In an alternate embodiment, the system may be configured to automatically provide a complete or partial description of the context of the alert condition automatically, without requiring a request from an operator. In yet another alternate embodiment, the system may be configured to provide certain context information automatically, and certain other context information at the request of an operator. (Page 6, lines 23-30.)

At block 325, relevant system objects are analyzed to obtain context information. Which system objects that may be analyzed depend, in part, on the context information sought. For example, in order to provide the status of the component that is the subject of the alert condition, the system might analyze only the system object that represents the subject component. On the other hand, if the context request pertains to other components, such as for example, a request to list all components whose operation depend on the subject component, some or all of the system objects may be analyzed to determine their dependence on the subject component. (Page 7, lines 1-8.)

At block 330, a context message is generated describing the context of the alert condition and/or the subject component. The context message is output at block 335. (Page 7, lines 9-10.)

In the illustrated embodiment, blocks 320 through 335 may be performed more than once, allowing an operator to engage the system in a dialog. As an example, the system may output an alert notification at block 315 such as "There is a very high risk of a catastrophic slowdown in server uschdb02." (Page 7, lines 11-14.)

As in the present example, certain information may be replaced or rephrased before the alert notification is output. Such replacement of terms, which may also be applied to messages describing the context of the alert condition, may be performed in order to make such a message more natural and easier to understand by a human operator. In the present example, the system has replaced numeric quantifiers such as "75% risk" and "severity 4" with non-numeric quantifiers like "very high risk" and "catastrophic slowdown." (Page 7, lines 15-21.)

Contextual Description of the Managed Object

In order to identify the source of the problem, a user might request "what system is that?" seeking a more detailed contextual description of the managed component that is the subject of the alert notification. At block 335, the system may respond: (Page 7, lines 23-26.)

"uschdb02 is a mission-critical NT server in the Chicago web site server farm. It runs SQLServer. It has a replication server with automatic failover named uschdb02B, and this server is operational and in normal status." (Page 7, lines 27-29.)

Such a response identifies the context of the managed component in terms meaningful to the user. Elements of the message include: (Page 8, lines 1-2.)

uschdb02:	The alert dialog manager 225 identifies the managed component in the sentence, to ensure that there is no misunderstanding and to make the sentence self-descriptive. (Page 8, lines 3-5.)
Mission-critical:	Database 215 maintains data describing the structure of the managed systems include an importance property for every object. The importance property may be defined at a class level or instance level, and may be propagated like status. The importance property is described in greater detail in the related commonly owned, co-pending, concurrently filed U.S. Patent

Application entitled "Method and Apparatus for Filtering Messages Based on Context" (Page 8, lines 6-13.)

NT server: Identifies the class of the relevant component. (Page 8, line 14.)

Chicago web site server farm: Identifies a grouping to which the relevant component belongs, which is discussed in greater detail below. (Page 8, lines 15-17.)

It runs SQLServer: This phrase identifies significant components contained in the managed component, in this example, a software system that runs on this server. In some cases, the function of a component may be carried out by a sub-component or subsystem hosted by the component. Since a component may host a number of sub-components and/or subsystems, in one embodiment only sub-components and/or subsystems having a threshold importance property may be reported to avoid/reduce confusion. (Page 8, lines 18-26.)

The final portion of the exemplary response, "it has a replication server with automatic failover named uschdb02B, and this server is operational and in normal status", provides other information about the managed object, that may be of interest to the operator. In this example, the system has information about a replication and failover configuration installed for the object, and describes it, with a reasonable amount of descriptive information about the replication server. The alert dialog manager 225 also provides the name and current status of the replication server. (Page 8, line 27 - page 9, line 3.)

Identify the Topological Location of the Managed Object

In order to identify the source of the problem, a user might request "where is the component located?" seeking a more detailed contextual description of the physical component that is the subject of the alert notification. At block 335, the system may respond: "uschdb02 is in Chicago, in the Headquarters building, in subnet xyz, in segment 1234." (Page 9, lines 5-10.)

The alert dialog manager 225 uses information about the location of the component in database 215 to determine the topological hierarchy related to the component, and creates a description based on a navigation down from the root of the hierarchy to the component. In the

present example, the system may respond: "uschdb02 is in Chicago, in HQ, in subnet xyz, in segment 1234." (Page 9, lines 11-15.)

Traffic Load Description

Other information that an operator might wish to know to address an error condition includes a traffic load description. The operator may request "How busy is the component?", and the system might respond, for example, with "the traffic load on uschdb02 is high but within normal operating range.". Such a response illustrates how answers may be self-descriptive, to reduce the risk of misunderstandings over referents of pronouns. (Page 9, lines 17-23.)

Dependency Description

In order to address some alert conditions, an operator may wish to identify dependency relationships between the component that is the subject of the alert condition and other components within the system. In order to facilitate providing such information, the alert dialog manager 225 supports dependency queries such as ""Who or what is dependent on the component?" (Page 9, lines 25-30.)

In response to the request for information, alert dialog manager 225 may reference database 215 at block 325 to analyze any dependency relationships associated with the subject component. The information regarding dependency relationships may be propagated up through a containment hierarchy. The alert dialog module 225 may generate and output a response, such as "All the web servers in the Chicago web site server farm are dependent on uschdb02.", for example, (Page 10, lines 1-6.)

The dependency relationships may be explicitly defined by a user or an application or they are deduced from discovered relationships. The dependency relationships may also be propagated to other components. For example, if an application depends on a database platform, a machine hosting the application also depends on the database platform. (Page 10, lines 7-11.)

In one embodiment, to make the context message more meaningful, the alert dialog manager 225 may avoid a long list of components in the initial message. Instead, at block 325, the alert dialog module 225 may identify a natural grouping of the components that can be used to generate a more meaningful description. For example, components may be identified as belonging to a pre-defined grouping with a distinct label. If database 215 already defines the

dependency relationship as pointing to a group, the alert dialog module 225 can readily create such a group-level description. If it does not, and the dependency relationships point to a number of components, the alert dialog module 225 can search for a natural grouping by listing all the groups that the components are members in, and analyzing the listing based on common definitions. (Page 10, lines 12-21.)

Examples of context messages resulting from such an analysis may include:

1)   If there is a perfect match of the list of components with a group: "All the servers in the Chicago web site..."

2)   If some of the components in the list form a perfect match with a group: "All the servers in the Chicago web site plus the Detroit warehouse server..."

3)   If the components in the list match a group definition almost exactly: "All the servers in the Chicago web site except the SNA server..."

4)   If the components in the list form an imperfect match with a group: "Most of the servers in the Chicago web site..." or "Many of the servers in the Chicago web site..." (Page 10, line 22 - page 11, line 3.)

In one embodiment, the alert dialog module 225 compares available group definitions, and selects one with the best match as the basis for the description. If no useful grouping matches the list, the system may enumerate the systems individually if the list is short, or may neglect to specifically identify a specific dependency by using a phrase such as "several systems". To assist in the selection of a suitable grouping as the basis for a description, database 215 may include one or more indicators of the significance of different types of groupings. For example, membership in a business process such as Order Processing may be identified as more interesting, and therefore more useful as a descriptor, than the fact that servers are contained in a single network segment. Further, the alert dialog module 225 may support a request to explicit enumeration of dependencies, such as "the Chicago web site server farm includes uschap01, uschap02, uschap03, uschap05, uschap11, and uschap12". (Page 11, lines 5-16.)

In addition, the user may issue a query about the status of an entire group. In response to such a query, the system may generate a response that refers to the entire group, instead of listing each of the objects in the group. The following dialog illustrates such a group based status request: (Page 11, lines 17-20.)

"All the web servers in the Chicago web site server farm are dependent on uschdb02."

"What are their status?"

"The Chicago web site server farm is in normal status." (Page 11, lines 21-24.)

Selection of Relevant Information

The analysis to obtain context information 325 is not limited to the objects of database 215. In some embodiments, alert dialog module 225 may utilize other information stores to obtain context information regarding the managed object. When an 30 abundance of context information is obtained, it may be advantageous to present only a portion of the available information so as not to impair understanding of the large-scale situation. Accordingly, alert dialog module 225 may include control logic to determine which pieces of information to present. In one embodiment, alert dialog module 225 ranks each piece of information based on the importance ranking of each object, as well as predefined rules regarding what types of information are most interesting. These rules may be dependent on factors such as, for example, a component being managed or an operator identifier. (Page 11, line 26 - page 12, line 7.)

For example, when managing some networked computer systems, it may be more interesting to know what business process the system is a part of, rather than what network subnet it is a part of. The alert dialog module 225 may create the descriptive elements, and then rank them by relevance, including only the most important ones. (Page 12, lines 8-11.)

Impact Analysis

In some embodiments, the object repository 110 stores data describing relationships among managed components, including, for example, containment relationships indicating which components are contained in another and various types of dependency relationships. Accordingly, the system may perform an impact analysis, which may be used to generate messages regarding all components affected by a diagnosed or predicted alert condition. (Page 12, lines 13-19.)

In one embodiment, the most important effects or problems may be reported to an operator. The management application 115 may employ logic to identify an impact analysis chain and create the alert notifications based on the most important object that is affected.

Since the importance property propagates along containment and dependency relationships, this is likely the highest object in the containment hierarchy. (Page 12, lines 20-24.)

Language Translation

It is recognized that in a multinational system, operators may speak different native languages. Accordingly, in one embodiment the alert notification system includes translation capabilities. (Page 12, lines 27-30.)

Language translation may be performed in at least two ways: (1) a message may be generated in several languages, and one of the several languages may be selected for output to an operator, or (2) a message may be generated in some suitable language and translated in real time to another language for output to an operator. (Page 13, lines 1-4.)

Since complex systems may generate a wide variety of messages, messages that are constructed by intelligent subsystems in the form of complete sentences with context-dependent elements, it may not be practical to address translation of messages simply by manually translating the messages beforehand. Further, because the individual subsystems may be written in different countries and may run in different countries, it may not be realistic to enforce that all messages be generated in English. Therefore, according to one embodiment, the alert subsystem of management application 115 may generate messages in a predetermined language based on each subsystem, and the messages may be translated by industry-standard translation software. (Page 13, lines 5-13.)

This application is further related to U.S. Patent Nos. 5,958,012, 6,289,380 and 6,327,550, and co-pending U.S. Applications Serial Nos., 09/558,897, and 09/559,237, which are all incorporated in their entirety herein by reference. (Page 13, lines 14-16.)

Accordingly, it is to be understood that the drawings and description in this disclosure are proffered to facilitate comprehension of the system, and should not be construed to limit the scope thereof. It should be understood that various changes, substitutions and alterations can be made without departing from the spirit and scope of the system. (Page 13, lines 17-21.)

Claim 1 recites:

> A method for reporting the context of an alert condition (e.g., Figure 3, reference numerals 305-335), comprising:

reporting an alert condition associated with a subject system object (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-22);

receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-30; Page 7, line 23 through Page 9, line 3);

accessing a database to identify a group of system objects known to be associated with one another (e.g., Figure 1; reference numeral 110; Figure 2; reference numeral 215; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, lines 13-17; Page 5, lines 18-28; Page 7, lines 1-8);

identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object (e.g., Figure 3; reference numeral 325; page 7, lines 1-8; Page 10, line 12 through Page 11, line 24);

analyzing the subject system object associated with the alert condition and the relevant system object to obtain the context data (e.g., Figure 3; reference numeral 325; page 7, lines 1-8; Page 10, line 12 through Page 11, line 24; Page 11, line 26 through Page 12, line 24);

generating a context message based on the context data, the context message responsive to the user-generated request dialogue ; and

outputting the context message (e.g., Figure 3; reference numeral 335; page 7, lines 9-10).

Claim 8 recites:

A method for reporting the context of an alert condition (e.g., Figure 3, reference numerals 305-335), comprising:

reporting an alert condition associated with a subject system object (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-22);

receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request textually requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-30; Page 7, line 23 through Page 9, line 3);

accessing a database to identify a group of system objects known to be associated with one another (e.g., Figure 1; reference numeral 110; Figure 2; reference numeral 215; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, lines 13-17; Page 5, lines 18-28; Page 7, lines 1-8);

identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object (e.g., Figure 3;

reference numeral 325; page 7, lines 1-8; Page 10, line 12 through Page 11, line 24);

analyzing the subject system object associated with the alert condition and the relevant system object to obtain context data (e.g., Figure 3; reference numeral 325; page 7, lines 1-8; Page 10, line 12 through Page 11, line 24; Page 11, line 26 through Page 12, line 24);

generating a context message based on the context data, the context message responsive to the user-generated request dialogue (e.g., Figure 3; reference numeral 330; page 7, lines 9-10);

outputting the context message (e.g., Figure 3; reference numeral 335; page 7, lines 9-10); and

wherein generating includes replacing quantifiable context data with a qualitative identifier (e.g., Figure 3; reference numeral 330; page 7, lines 9-10 and 15-21; Page 11, line 27 through Page 12, line 11).

Claim 9 recites:

A system for reporting the context of an alert condition (e.g., Figures 1A, 1B, and 2, reference numerals 100 and 200; Page 4, line 10 through Page 6, line 5), comprising:

a management application processor (e.g., Figures 1B and 2, reference numeral 115; Page 4, line 29 through Page 5, line 4; Page 5, line 18 through Page 6, line 5) comprising:

means for reporting an alert condition associated with a subject system object (e.g., Figures 1B and 2; reference numerals 115 and 220; Figure 3; reference numerals 305 and 310; Page 5, line 18 through Page 6, line 22);

means for receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object (e.g., Figure 1B and 2, reference numeral 115; Figure 3; reference numerals 305 and 310; Page 5, lines 18 through Page 6, line 30; Page 7, line 23 through Page 9, line 3);

means for accessing a database to identify a group of system objects known to be associated with one another (e.g., Figures 1B and 2, reference numerals 110 and 115; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, lines 13-17; Page 5, lines 18-28; Page 7, lines 1-8);

means for identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object (e.g., Figures 1B and 2, reference numerals 110 and 115; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, lines 13-17; Page 5, lines 18-28; Page 7, lines 1-8; Page 10, line 12 through Page 11, line 24);

means for analyzing the subject system object associated with the alert condition and the relevant system object to obtain the context data (e.g., Figures 1B and 2, reference numerals 110 and 115; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, line 18 through

Page 6, line 5; Page 7, lines 1-8; Page 10, line 12 through Page 11, line 24; Page 11, line 26 through Page 12, line 24);

  means for generating a context message based on the context data, the context message responsive to the user-generated request dialogue (e.g., Figures 1B and 2, reference numerals 110 and 115; Figure 3; reference numeral 330; Page 4, line 29 through Page 5, line 4; Page 5, line 18 through Page 6, line 5; Page 7, lines 9-10); and

  means for outputting the context message (e.g., Figures 1B and 2, reference numerals 110 and 115; Figure 3; reference numeral 335; Page 4, line 29 through Page 5, line 4; Page 5, line 18 through Page 6, line 5; Page 7, lines 9-10).

Claim 11 recites:

  Logic encoded in a storage medium (e.g., Figures 1A, 1B, and 2, reference numerals 100 and 200; Page 4, line 10 through Page 6, line 5; Page 11, line 27 through Page 12, line 7; Page 13, lines 513) and operable when executed to:

  report an alert condition associated with a subject system object (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-22);

  receive, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-30; Page 7, line 23 through Page 9, line 3);

  access a database to identify a group of system objects known to be associated with one another (e.g., Figure 1; reference numeral 110; Figure 2; reference numeral 215; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, lines 13-17; Page 5, lines 18-28; Page 7, lines 1-8);

  identify, from the group of system objects, a relevant system object that is known to be associated with the subject system object (e.g., Figure 3; reference numeral 325; page 7, lines 1-8; Page 10, line 12 through Page 11, line 24);

  analyze the subject system object associated with the alert condition and the relevant system object to obtain the context data (e.g., Figure 3; reference numeral 325; page 7, lines 1-8; Page 10, line 12 through Page 11, line 24; Page 11, line 26 through Page 12, line 24);

  generate a context message based on the context data, the context message responsive to the user-generated request dialogue (e.g., Figure 3; reference numeral 330; page 7, lines 9-10); and

  output the context message (e.g., Figure 3; reference numeral 335; page 7, lines 9-10).

Dependent Claim 33 incorporates the elements of Claim 1, and further recites the following:

> wherein the type of user defined context data is selected from the group consisting of location information for the subject system object, logical relationship information of the subject system object to other system objects, operational status information of the subject system object, or information regarding interest/business groups associated with the subject system object (e.g., Figures 1B and 2, reference numerals 110 and 115; Figure 3; reference numeral 325; Page 4, line 29 through Page 5, line 4; Page 5, line 18 through Page 6, line 5; Page 7, lines 1-8; Page 10, line 12 through Page 11, line 24; Page 11, line 26 through Page 12, line 24).

Dependent Claim 34 incorporates the elements of Claim 1, and further recites the following:

> wherein the user-generated text-based dialogue request comprises a first user-generated text-based dialogue request specifying a user defined type of context data(e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-30; Page 7, line 23 through Page 9, line 3); and further comprising:
>> after outputting the context message, receiving a second user-generated text-based dialogue request specifying a second user defined type of context data (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-30; Page 7, line 23 through Page 9, line 3; Page 7, lines 15-21).

Dependent Claim 35 incorporates the elements of Claim 1, and further recites the following:

> wherein the user-generated text-based dialogue request textually requests the user defined type of context data (e.g., Figure 3; reference numerals 305 and 310; Page 5, lines 18-28; Page 6, lines 11-30; Page 7, line 23 through Page 9, line 3).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Are Claims 1, 3-5, 9, 11, 13-15, and 36 unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,125,390 issued to Touboul ("*Touboul*") and U.S. Patent No. 6,049,828 issued to Dev et al. ("*Dev*") in view of U.S. Patent No. 5,761,502 issued to Jacobs ("*Jacobs*")?

Is Claim 8 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 6,006,016 to Faigon et al. ("*Faigon*")?

Are Claims 6 and 16 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 6,011,838 to Cox ("*Cox*")?

Are Claims 7 and 17 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 5,748,098 to Grace ("*Grace*")?

Is Claim 18 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 6,006,016 to Faigon et al. ("*Faigon*")?

Are Claims 19-20 and 31-32 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev* and *Jacobs* in view of U.S. Patent No. 5,933,601 to Fanshier ("*Fanshier*")?

Is Claim 33 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev,* and *Jacobs?*

Is Claim 34 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev,* and *Jacobs?*

Is Claim 35 unpatentable under 35 U.S.C. § 103(a) over *Touboul, Dev,* and *Jacobs?*

ARGUMENTS

Claims 1, 3-9, 11 and 13-20, and 31-36 are pending and rejected. Claims 21-30 are withdrawn. As explained below, Appellant believes all claims to be allowable over the cited references. Accordingly, Appellant submits that these rejections are improper and should be reversed by the Board. Appellant addresses independent Claims 1, 8, 9, and 11 and dependent Claims 33-35 below.

I.   The Legal Standard for Obviousness

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. One of the three basic criteria that must be established by an Examiner to establish a *prima facie* case of obviousness is that "the prior art reference (or references when combined) must teach or suggest *all the claim limitations*." *See* M.P.E.P. § 706.02(j) citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added). "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." *See* M.P.E.P. § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970) (emphasis added).

In addition, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed below, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an Appellant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon Appellant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142.

The U.S. Supreme Court's decision in *KSR Int'l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007). The analysis

regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue "should be made explicit." *KSR*, 127 S.Ct. at 1740-41. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 1741 (internal quotations omitted).

The new examination guidelines issued by the PTO in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO's view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

II. **Claims 1, 3-5, 9, 11, 13-15, and 36 are allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs* combination**

Independent Claim 1, as presented on Appeal, recites:

> A method for reporting the context of an alert condition, comprising:
> reporting an alert condition associated with a subject system object;
> receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object;
> accessing a database to identify a group of system objects known to be associated with one another;
> identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object;
> analyzing the subject system object associated with the alert condition and the relevant system object to obtain the context data;
> generating a context message based on the context data, the context message responsive to the user-generated request dialogue; and

outputting the context message.

Appellant respectfully submit that the cited references do not disclose, teach, or suggest the combination of elements recited above.

For example, the proposed *Touboul-Dev-Jacobs* combination does not disclose, teach, or suggest "receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object," as recited in Claim 1. In the *Final Office Action*, the Examiner acknowledges that *Touboul*, as the primary reference, does not disclose these limitations and instead relies upon *Dev*. (*Final Office Action*, page 3). Specifically, the Examiner points to a list of alarms displayed in Figure 10 of *Dev* and argues that the above-quoted limitations are taught by the act of "clicking on the condition red" to obtain more information (*Final Office Action*, page 3). However, Appellant respectfully points out that the alleged request of *Dev* (i.e., "clicking on the condition red") does not allow (i) specification of the type of context data to be requested or (ii) the user to specify a user defined type of context data. Additionally, the clicking on a portion of text does not comprise " user-based text-based dialogue."

As explained in one example scenario presented in Appellant's Specification:

> As an example, the system may output an alert notification at block 315 such as 'There is a very high risk of a catastrophic slowdown in server uschdb02 . . . In order to identify the source of the problem, a user might request 'what system is that?' seeking a more detailed contextual description of the managed component that is the subject of the alert notification . . . [or] . . . [i]n order to identify the source of the problem, a user might request 'where is the component located?' seeking a more detailed contextual description of the physical component that is the subject of the alert notification.

(Specification, page 7, lines 12-26 and page 9, lines 6-7). By contrast, *Dev* makes it clear that no such specification by the user is possible. Rather, *Dev* merely discloses that by clicking on a particular alarm, the user may generically obtain "more information." (*Dev*, col. 15, lines 16-18). The alleged request of *Dev* does not allow specification of the type of context data to be requested or the user to specify a user defined type of context data. In fact, *Dev* is completely devoid of any teaching that the alleged request "specif[ies] a user defined type of context data" as recited in Claim 1.

As stated above, the Examiner rejects the above-quoted limitations of Claim 1 by arguing that the system of *Dev* allegedly enables a user to define the severity of the event (e.g., "Condition Red"), and therefore, the act of clicking on "Condition Red" amounts to a user generated text-based dialogue specifying a user defined type of context data. (*Final Office Action*, page 14, lines 18 through page 15, line 1 (citing *Dev*, col. 8, lines 11-14). However, Appellant respectfully points out that this is a mischaracterization of *Dev*.

According to the portion of *Dev* relied on by the Examiner:

> Event messages sent to the user interface can utilize a filter process that is specified by the user. The user can **specify model types and a minimum event severity for which events will be displayed** on the user screen. Events from unspecified model types or less than the minimum severity will not be displayed.

(*Dev*, col. 8, lines 11-14 (emphasis added)). That is, this passage of *Dev* merely discloses that a filter may be established by a user to limit the events displayed on the user's screen. Thus, if the severity of the event is below a minimum level, the event will not be displayed. Even for those events that are displayed, the user may still only generically obtain "more information" by clicking on a particular alarm (i.e., "Condition Red"). (*Dev*, col. 15, lines 16-18). However, the clicking on a portion of text does not comprise " user-based text-based dialogue." Further, "clicking on the condition red" by a user does not result in the specification of the type of context data to be requested or allow the user to specify a user defined type of context data.

For at least these reasons, Appellant submits that the act of "clicking on the condition red" as argued by the Examiner does not disclose, or even teach or suggest, "a user-generated text-based dialogue request specifying a user defined type of context data" recited in Claim 1. Consequently, Appellant respectfully contends that Claim 1 and each of its dependent claims (e.g., Claims 3-5 and 36) are in condition for allowance. For analogous reasons, Appellant further contends that Claims 9 and 11 and each of their dependent claims (e.g., Claims 13-15) are in condition for allowance.

III.   **Claim 8 is allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs* combination**

Independent Claim 8, as presented on Appeal, recites:

A method for reporting the context of an alert condition, comprising:

reporting an alert condition associated with a subject system object;

receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request textually requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object;

accessing a database to identify a group of system objects known to be associated with one another;

identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object;

analyzing the subject system object associated with the alert condition and the relevant system object to obtain context data;

generating a context message based on the context data, the context message responsive to the user-generated request dialogue;

outputting the context message; and

wherein generating includes replacing quantifiable context data with a qualitative identifier.

Appellant respectfully submit that the cited references do not disclose, teach, or suggest the combination of elements recited above.

For example, the proposed *Touboul-Dev-Jacobs* combination does not disclose, teach, or suggest "receiving, in response to the reporting of the alert condition, a user-generated **text-based dialogue** request **textually requesting** context data for the subject system object." In the *Final Office Action*, the Examiner acknowledges that *Touboul*, as the primary reference, does not disclose these limitations and instead relies upon *Dev*. (*Final Office Action*, page 10). Again, the Examiner points to a list of alarms displayed in Figure 10 of *Dev* and argues that the above-quoted limitations are taught by the act of "clicking on the condition red" to obtain more information (*Final Office Action*, page 10). Specifically, to reject the recited limitations, the Examiner points to sections of *Dev* that describe a user being able to obtain "more information" on a particular alarm included in a list of alarms displayed in Figure 10 by "click[ing] on a particular alarm in the list of alarms." (*Final Office Action*, page 10 (citing, *Dev* col. 15, lines 12-29; see also *Dev* col. 8, lines 31-37). More particularly, the Examiner argues, "since the request to obtain more information is generated by clicking on the text of the severity of 'Condition Red,' Dev teaches 'textually requests context data.'" (*Final Office Action*, page 15). Appellant respectfully disagrees.

Dev merely discloses that by clicking on a particular alarm (i.e., "Condition Red"), the user may generically obtain "more information." (*Dev*, col. 15, lines 16-18). Merely because the alleged request of *Dev* may be created by clicking on the textual words "Condition Red," does disclose that the alleged request "textually request[s] context data." The phrase

"Condition Red" does not textually request anything. Additionally, the phrase is not user-generated. Rather, the text is presented to the user for selection by the user." Thus, the clicking on a portion of text does not comprise " user-generated text-based dialogue." There is no dialogue received from the user in the system of *Dev*. For these reasons, the clicking on "Condition Red" is not a "user-generated text-based dialogue request textually requesting context data," and it continues to be Appellant's position that the act of "clicking on the text of the severity of 'Condition Red'" as argued by the Examiner does not disclose, or even teach or suggest, "receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request textually requesting context data for the subject system object," as recited in Claim 8.

For at least these reasons, Appellant respectfully contends that Claim 8 is in condition for allowance.

IV. Claims 6 and 16 are allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs-Cox* combination

Dependent Claims 6 and 16 depend on Claims 1 and 11, respectively. Accordingly, dependent Claims 6 and 16 are not obvious over the proposed *Touboul-Dev-Jacobs-Cox* combination at least because Claims 6 and 16 include the limitations of their respective independent claims, which Appellant has shown above to be allowable. Since Claims 6 and 16 incorporate the limitations of their respective independent claims, Appellant has not provided detailed arguments with respect to Claims 6 and 16. However, Appellant reserves the right to argue these claims if it becomes appropriate. Appellant respectfully requests reconsideration and allowance of Claims 6 and 16.

V. Claims 7 and 17 are allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs-Grace* combination

Dependent Claims 7 and 17 depend on Claims 1 and 11, respectively. Accordingly, dependent Claims 7 and 17 are not obvious over the proposed *Touboul-Dev-Jacobs-Grace* combination at least because Claims 7 and 17 include the limitations of their respective independent claims, which Appellant has shown above to be allowable. Since Claims 7 and 17 incorporate the limitations of their respective independent claims, Appellant has not

provided detailed arguments with respect to Claims 7 and 17. However, Appellant reserves the right to argue these claims if it becomes appropriate. Appellant respectfully requests reconsideration and allowance of Claims 7 and 17.

VI. Claim 18 is allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs-Faigon* combination

Dependent Claim 18 depends on Claim 11. Accordingly, dependent Claim 8 is not obvious over the proposed *Touboul-Dev-Jacobs-Faigon* combination at least because Claim 18 include the limitations of Claim 11, which Appellant has shown above to be allowable. Since Claim 18 incorporates the limitations of Claim 11, Appellant has not provided detailed arguments with respect to Claim 18. However, Appellant reserves the right to argue this claim if it becomes appropriate. Appellant respectfully requests reconsideration and allowance of Claim 18.

VII. Claims 19-20 and 31-32 are allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs-Fanshier* combination

Dependent Claims 19-20 and 31-32 depend on Claims 11 and 1, respectively. Accordingly, dependent Claims 19-20 and 31-32 are not obvious over the proposed *Touboul-Dev-Jacobs-Fanshier* combination at least because Claims 19-20 and 31-32 include the limitations of their respective independent claims, which Appellant has shown above to be allowable. Since Claims 19-20 and 31-32 incorporate the limitations of their respective independent claims, Appellant has not provided detailed arguments with respect to Claims 19-20 and 31-32. However, Appellant reserves the right to argue these claims if it becomes appropriate. Appellant respectfully requests reconsideration and allowance of Claims 19-20 and 31-32.

VIII. Claim 33 is allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs* combination

Claim 33 depends upon Claim 1 and includes the limitations of independent Claim 1. Accordingly, Claim 33 is not obvious over the proposed *Touboul-Dev-Jacobs* combination for the reasons discussed above with regard to Claim 1.

Additionally, Claim 33 recites claim elements that further distinguish the art. For example, Claim 33 recites that "the type of user defined context data is selected from the group consisting of location information for the subject system object, logical relationship information of the subject system object to other system objects, operational status information of the subject system object, or information regarding interest/business groups associated with the subject system object." In the *Final Office Action*, the Examiner acknowledges that *Touboul*, *Dev*, and *Jacobs* "do not specifically teach user defined context data" selected from the group recited in Appellant's claim. (*Final Office Action*, page 7). However, because *Dev* allegedly discloses user defined context data selected from any information contained in the event message, the Examiner maintains that the above quoted claim limitations are obvious over the teachings of *Dev*. (*Final Office Action*, page 7). Appellant disagrees.

First, *Dev* does not disclose user defined context data. Rather, *Dev* merely discloses that "[e]vent messages sent to the user interface can utilize a filter process that is specified by the user." (*Dev*, col. 8, lines 11-12). Thus, a user can specify the types of objects for which the user will monitor and the severity that must be reached before a user is notified. (*Dev*, col. 8, lines 11-19). Although *Dev* discloses that "any information contained in the event message can be used for event filtering," this only suggests that any information included in the alert message could be used for filtering out events that the user will not receive. Because such information in the alert messages and the messages themselves are system generated and not user-generated, *Dev* does not disclose, teach, or suggest user defined context data about an object. Accordingly, it would not have been obvious to modify *Dev* to include "the type of user defined context data is selected from the group consisting of location information for the subject system object, logical relationship information of the subject system object to other system objects, operational status information of the subject system object, or information regarding interest/business groups associated with the subject system object," as recited in Appellant's Claim 33.

For at least these reasons, Appellant respectfully contends that dependent Claim 33 is in condition for allowance.

IX.   Claim 34 is allowable under 35 U.S.C. § 103(a) over the proposed *Touboul-Dev-Jacobs* combination

Claim 34 depends upon Claim 1 and includes the limitations of independent Claim 1. Accordingly, Claim 34 is not obvious over the proposed *Touboul-Dev-Jacobs* combination for the reasons discussed above with regard to Claim 1.

Additionally, Claim 34 recites claim elements that further distinguish the art. For example, Claim 34 recites that "after outputting the context message, receiving a second user-generated text-based dialogue request specifying a second user defined type of context data." In the *Final Office Action*, the Examiner relies upon *Dev* for disclosure of the recited claim elements. (*Final Office Action*, page 8). Specifically, the examiner states that "clicking on other alarm[s]" discloses Appellant's recited claim limitations. Appellant respectfully disagrees.

As stated above, *Dev* merely describes a user being able to obtain "more information" on a particular alarm included in a list of alarms displayed in Figure 10 by "click[ing] on a particular alarm in the list of alarms." (*Final Office Action*, page 10 (citing, *Dev* col. 15, lines 16-18; col. 8, lines 11-14; Figure 10, reference numeral 420). As noted by the Examiner, *Dev* indicates that also "click on other alarms in the alarm list" to obtain "similar information . . . regarding other alarm conditions." (*Dev*, col. 15, lines 27-29). However, clicking on the textual words "Condition Red" or another identifier of an alarm does disclose "user-generated text-based dialogue request specifying a second user defined type of context data," as recited in Claim 34. To the contrary, the phrase "Condition Red" does not textually request anything. Additionally, the phrase is not user-generated. Rather, the text is presented to the user for selection by the user. Therefore, it continues to be Appellant's position that the act of clicking on the text identifying an alarm does not disclose, or even teach or suggest "after outputting the context message, receiving a second user-generated text-based dialogue request specifying a second user defined type of context data," as recited in Claim 34.

For at least these reasons, Appellant respectfully contends that dependent Claim 34 is in condition for allowance.

X. **Claim 35 is allowable under 35 U.S.C. § 103(a) over the proposed** *Touboul-Dev-Jacobs* **combination**

Claim 35 depends upon Claim 1 and includes the limitations of independent Claim 1. Accordingly, Claim 35 is not obvious over the proposed *Touboul-Dev-Jacobs* combination for the reasons discussed above with regard to Claim 1.

Additionally, Claim 35 recites claim elements that further distinguish the art. For example, Claim 35 recites that "the user-generated text-based dialogue request **textually request** the user defined type of context data." In the *Final Office Action*, the Examiner relies upon *Dev* for disclosure of the recited claim elements. (*Final Office Action*, page 8). Again, the Examiner points to a list of alarms displayed in Figure 10 of *Dev* and argues that the above-quoted limitations are taught by the act of "clicking on the condition red" to obtain more information (*Final Office Action*, page 8). Specifically, to reject the recited limitations, the Examiner points to sections of *Dev* that describe a user being able to obtain "more information" on a particular alarm included in a list of alarms displayed in Figure 10 by "click[ing] on a particular alarm in the list of alarms." (*Final Office Action*, page 10 (citing, *Dev* col. 15, lines 16-18; col. 8, lines 11-14; Figure 10, reference numeral 420). More particularly, the Examiner argues, "since the request to obtain more information is generated by clicking on the text of the severity of 'Condition Red,' Dev teaches 'textually requests context data.'" (*Final Office Action*, page 15). Appellant respectfully disagrees.

As stated above with regard to Claim 8, *Dev* merely discloses that by clicking on a particular alarm (i.e., "Condition Red"), the user may generically obtain "more information." (*Dev*, col. 15, lines 16-18). Merely because the alleged request of *Dev* may be created by clicking on the textual words "Condition Red," does disclose that the alleged request "textually request[s] context data." The phrase "Condition Red" does not textually request anything. Additionally, the phrase is not user-generated. Rather, the text is presented to the user for selection by the user." Certainly, the clicking on "Condition Red" is not a "user-generated text-based dialogue request textually requesting context data." Therefore, it continues to be Appellant's position that the act of "clicking on the text of the severity of 'Condition Red'" as argued by the Examiner does not disclose, or even teach or suggest that "the user-generated text-based dialogue request **textually request** the user defined type of context data," as recited in Claim 35.

For at least these reasons, Appellant respectfully contends that dependent Claim 35 is in condition for allowance.
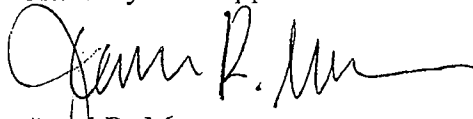
CONCLUSION

Appellant has demonstrated that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellant respectfully requests the Board to reverse the final rejections and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

The Commissioner is hereby authorized to charge $540.00 for filing this Brief in support of an Appeal to Deposit Account No. 02-0384 of Baker Botts, L.L.P. No other fees are believed due; however, the Commissioner is authorized to charge any additional fees or credits to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Appellant

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Dated: August 25, 2009

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at Customer No. **05073**

APPENDIX A

Pending Claims

1.   (Rejected)   A method for reporting the context of an alert condition, comprising:

reporting an alert condition associated with a subject system object;

receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object;

accessing a database to identify a group of system objects known to be associated with one another;

identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object;

analyzing the subject system object associated with the alert condition and the relevant system object to obtain the context data;

generating a context message based on the context data, the context message responsive to the user-generated request dialogue; and

outputting the context message.

2.   (Canceled)

3.   (Rejected)   The method of claim 1, wherein the analyzing includes determining properties of the subject system object.

4.   (Rejected)   The method of claim 1, wherein analyzing includes determining a physical location of a component represented by the subject system object.

5.   (Rejected)   The method of claim 1, wherein analyzing includes determining a logical relationship of a component represented by the subject system object to a component represented by the relevant system object.

6.   (Rejected)   The method of claim 1, wherein analyzing includes determining a traffic load associated with the subject system object.

7.   **(Rejected)**   The method of claim 1, wherein the relevant system object representing a component that is dependent on a component represented by the subject system object.

8.   · **(Rejected)**   A method for reporting the context of an alert condition, comprising:

reporting an alert condition associated with a subject system object;

receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request textually requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object;

accessing a database to identify a group of system objects known to be associated with one another;

identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object;

analyzing the subject system object associated with the alert condition and the relevant system object to obtain context data;

generating a context message based on the context data, the context message responsive to the user-generated request dialogue;

outputting the context message; and

wherein generating includes replacing quantifiable context data with a qualitative identifier.

9.   (Rejected) A system for reporting the context of an alert condition, comprising:
a management application processor comprising:

means for reporting an alert condition associated with a subject system object;

means for receiving, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object;

means for accessing a database to identify a group of system objects known to be associated with one another;

means for identifying, from the group of system objects, a relevant system object that is known to be associated with the subject system object;

means for analyzing the subject system object associated with the alert condition and the relevant system object to obtain the context data;

means for generating a context message based on the context data, the context message responsive to the user-generated request dialogue; and

means for outputting the context message.

10.   (Canceled)

11.   (Rejected) Logic encoded in a storage medium and operable when executed to:
report an alert condition associated with a subject system object;

receive, in response to the reporting of the alert condition, a user-generated text-based dialogue request specifying a user defined type of context data for the subject system object and one or more relevant system objects known to be associated with the subject system object;

access a database to identify a group of system objects known to be associated with one another;

identify, from the group of system objects, a relevant system object that is known to be associated with the subject system object;

analyze the subject system object associated with the alert condition and the relevant system object to obtain the context data;

generate a context message based on the context data, the context message responsive to the user-generated request dialogue; and

output the context message.

12.   **(Canceled)**

13.   **(Rejected)** The logic of claim 11, wherein when analyzing at least the subject system object, the logic is further operable to determine properties of the subject system object.

14.   **(Rejected)** The logic of claim 11, wherein when analyzing at least the subject system object, the logic is further operable to determine a physical location of a component represented by the subject system object.

15.   **(Rejected)** The logic of claim 11, wherein when analyzing at least the subject system object, the logic is further operable to determine a logical relationship of a component represented by the subject system object to a component represented by the relevant system object.

16.   **(Rejected)** The logic of claim 11, wherein when analyzing at least the subject system object, the logic is further operable to determine a traffic load associated with the subject system object.

17.   **(Rejected)** The logic of claim 11, wherein the relevant system object representing a component that is dependent on a component represented by the subject system object.

18.   **(Rejected)** The logic of claim 11, wherein when generating the logic is further operable to replace quantifiable user defined context data with a qualitative identifier.

19.   **(Rejected)** The logic of claim 11, wherein the relevant system object represents a component that is a sub-component of a component represented by the subject system object.

20.   **(Rejected)** The logic of claim 11, wherein the relevant system object represents a component that is in a grouping with a component represented by the subject system object.

21.   (Withdrawn)   A system for reporting the context of an alert condition, comprising:

a database storing data associated with a plurality of system objects, the plurality of objects comprising at least a subject system object and a relevant object;

a management application module coupled to the database and operable to:

report an alert condition associated with a subject system object;

identify a relevant system object that is associated with the subject system object;

analyze the subject system object associated with the alert condition and the relevant system object to obtain context data;

generate a context message based on the context data; and

output the context message.

22.   (Withdrawn) The system of claim 21, wherein the management application is further operable to receive a request to report the context of the alert condition.

23.   (Withdrawn) The system of claim 21, wherein when analyzing at least the subject system object, the management application is operable to determine properties of the subject system object.

24.   (Withdrawn) The system of claim 21, wherein when analyzing at least the subject system object, the management application is operable to determine a physical location of a component represented by the subject system object.

25.   (Withdrawn) The system of claim 21, wherein when analyzing at least the subject system object, the management application is operable to determine a logical relationship of a component represented by the subject system object to a component represented by the relevant system object.

26.   (Withdrawn) The system of claim 21, wherein when analyzing at least the subject system object, the management application is operable to determine a traffic load associated with the subject system object.

27.   (Withdrawn) The system of claim 21, wherein the relevant system object represents a component that is dependent on a component represented by the subject system object.

28.   (Withdrawn) The system of claim 21, wherein when generating the context message, the management application is operable to replace quantifiable context data with a qualitative identifier.

29.   (Withdrawn) The system of claim 21, wherein the relevant system object represents a component that is a sub-component of a component represented by the subject system object.

30.   (Withdrawn) The system of claim 21, wherein the relevant system object represents a component that is in a grouping with a component represented by the subject system object.

31.   (Rejected) The method of claim 1, wherein the relevant system object represents a component that is a sub-component of a component represented by the subject system object.

32.   (Rejected) The method of claim 1, wherein the relevant system object represents a component that is in a grouping with a component represented by the subject system object.

33.   (Rejected) The method of claim 1, wherein the type of user defined context data is selected from the group consisting of location information for the subject system object, logical relationship information of the subject system object to other system objects, operational status information of the subject system object, or information regarding interest/business groups associated with the subject system object.

34.   (Rejected) The method of claim 1, wherein the user-generated text-based dialogue request comprises a first user-generated text-based dialogue request specifying a user defined type of context data; and further comprising:

after outputting the context message, receiving a second user-generated text-based dialogue request specifying a second user defined type of context data.

35.   (Rejected) The method of claim 1, wherein the user-generated text-based dialogue request textually requests the user defined type of context data.

36.   (Rejected) The method of claim 1, wherein the context message contains the user defined type of context data specified in the request.

37.   (Not Entered) The method of claim 1, wherein the alert condition is reported to a user; and further comprising:

enabling the user to specify the user defined type of context data after receiving the alert condition.

APPENDIX B

Evidence Appendix

Other than the references attached to this Appeal Brief as Appendices A and B, no evidence was submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, and no other evidence was entered by the Examiner and relied upon by Appellant in the Appeal.

APPENDIX C

Related Proceedings Appendix

As stated on Page 3 of this Appeal Brief, to the knowledge of Appellant's Counsel, there are no known appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision regarding this Appeal.

In The United States Patent and Trademark Office
On Appeal From The Examiner To The Board
of Patent Appeals and Interferences

In re Application of: Reuven (nmi) Battat, et al.

Serial No.: 09/949,101

Filed: September 7, 2001

Art Unit.: 2131

Confirmation No.: 7825

Examiner: Matthew T. Henning

Title: *NETWORK MANAGEMENT SYSTEM USING VIRTUAL REALITY TECHNIQUES TO DISPLAY AND SIMULATE NAVIGATION TO NETWORK COMPONENTS*

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appeal Brief

Appellants have appealed to the Board of Patent Appeals and Interferences ("Board") from the decision of the Examiner dated February 5, 2008, finally rejecting Claims 6-10, 13-18, and 20-26. Appellants filed a Notice of Appeal on May 5, 2008. Appellants respectfully submit this Appeal Brief.

Table of Contents

Real Party In Interest

The inventors assigned this application to Computer Associates International, Inc., pursuant to an assignment recorded at reel 012161, frame 0483. Accordingly, the real party in interest is Computer Associates International, Inc.

Related Appeals and Interferences

Appellants identify the following appeal that may be related to or that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No.:	2008-2553
Appn. Ser. No.:	09/982,301
Appellant:	Anders Vinberg
Represented by:	Baker Botts LLP
Assignee:	Computer Associates Think, Inc. (pursuant to assignment recorded at reel 012940, frame 0878)
Status:	Awaiting decision of Board of Patent Appeals and Interferences

Appellants, the undersigned Attorney for Appellants, and the Assignee know of no other applications on appeal that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 6-10, 13-18, and 20-26 were finally rejected by the decision of the Examiner dated February 5, 2008. Claims 1-5, 11-12, 19, and 27 have been withdrawn. Appellants present Claims 6-10, 13-18, and 20-26 for appeal and set forth these claims in Appendix A.

Status of Amendments

All amendments submitted by Appellants were entered by the Examiner prior to the mailing of the final Office Action dated February 5, 2008.

Summary of Claimed Subject Matter

A system provides an interface that displays a real-time, three-dimensional view of assets in a networked computer system. P. 9, l. 21 – p. 10, l. 2 The system may use virtual reality technology to show computer systems, printers, network routers, and other devices with their network interconnections in a realistic or stylized environment (e.g., a geographic region like a country, region, or city together with buildings). P. 8, ll. 16-20. A user of the system may navigate through the virtual environment and directly select devices for manipulation. P. 8, ll. 20-21. The interface may provide automatic or manual piloting for traversing the networked topography. P. 9, ll. 6-8. Fast pathing and color coded alerts allow the user to determine precisely which resource is experiencing a problem. P. 9, ll. 8-9. The user can then drill down to any node and access management functions to resolve the problem or administer the system. P. 9, ll. 9-11.

In operation, the system may initially display a view of a typical system administrator's area of responsibility such as, for example, a world map. P. 34, ll. 1-4. From there, the user may navigate closer to an area of interest, either by flying with manual control or with auto pilot (e.g., if the user clicks on the map the system will fly the user to the selected location). P. 34, ll. 5-7. As the user gets closer, the system may display a relief map with cities and network connections. P. 34, ll. 8-10. In some embodiments, all the cities, buildings, and networks in the network are shown. P. 34, ll. 11-13. To reduce complexity, the user may activate a business view which shows only what is relevant to a specific business interest at any particular moment. Id.

As the user gets closer to a city, the user may see buildings with each building reflecting the aggregate status of the systems inside it. P. 34, ll. 14-16. The aggregate status of a building may be displayed in real time by a status light hovering over the building. Id. As the user flies into a building (e.g., by double-clicking on it), the system may display a network scene (e.g., the LAN configuration inside the building). P. 34, ll. 16-21. The network scene may show the actual computers, printers, routers, and bridges connected to the network. Id. In some embodiments, the system reflects the entire network hierarchy, showing internetworks, subnetworks, and segments. P. 34, l. 21 – p. 35, l. 3. The user can fly around among the computers, identifying all resources and observing their status. Id. The system shows computers, routers, printers and other devices as realistic models. Id. The

system may display the status of computers, components, and software systems on a continual basis. Id.

If the user flies inside a computer (e.g., by double-clicking on it), the user may see a view of the inside of the computer with the relevant subsystems (e.g., a tape drive, a disk subsystem, a processor, a network card, and an aggregate of software processes and other software subsystems). P. 35, ll. 4-6. By entering a subsystem, the user may cause the system to show a view of what is going on inside the subsystem. P. 35, ll. 7-11. For example, the system may show monitored processes and display their real-time status, size, resource consumption, and so forth. Id. The system may continually monitor processes through the operation of agents on the target machine. Id.

In some embodiments, the system provides a display that adjusts the level of detail of displayed objects. P. 37, ll. 4-17. For example, an initial scene inside a building may show the various subnetworks and routers. Id. When a user enters a subnetwork, the user sees the various segments and bridges, and eventually sees the computers and other devices attached to the opened segments. Id. The segments may open up in place as the user gets close to them, showing all the computers, printers and other devices. Id. In some embodiments, the rendering may be optimized by simplifying the computers that are far away and automatically restoring a more precise representation of the computers as the user gets closer. Id.

According to certain embodiments, the system may filter the displayed objects to reflect a specific business interest. P. 11, ll. 3-21. A user may select a particular business interest such as, for example, payroll, inventory, or cost accounting. Id. The system may filter the displayed objects so that only the objects related to the selected business interest are displayed. Id. This feature inverts the traditional resource-centric view of enterprise management into a logical view, mapping managed resources needed to a specific business perspective. Id. Accordingly, the user may identify the parts of the network that relate to a specific business interest and the system may display those parts in three-dimensional, virtual reality environment that enables the user to quickly and intuitively identify and solve a problem with a particular business interest. Id.

In some embodiments, the system may display the status of objects. P. 27, l. 20 – p. 28, l. 13. The status may reflect what is going on inside computers, operating systems, networks, disk drives, databases and critical processes. Id. For example, a status indicator may show the status of a computer in terms of loading, process queue length, and number of

users. Id. In some embodiments, status indicators are aggregated so that network segments, subnetworks, buildings and cities reflect the status of what is in them. Id. The system may weigh alerts based on importance to determine an aggregate status. Id. For example, the weighing may account for the reality that a database server may be more important that a desktop computer. P. 30, ll. 15-16.

According to certain embodiments, as a user navigates through the networked topography, the system may determine lists of visible objects. P. 17, ll. 12-13. For example, the system may determine if the user should jump to a different scene. P. 17, ll. 1-9. If so, the system may determine a list of visible objects in the current scene. Id. The objects may be represented by three-dimensional models, and the system may adjust the models to reflect any changes in position. P. 17, ll. 10-21. The system may iterate through the list of visible objects, selecting each object to be rendered. Id. The system may determine if an object should be closed and, if so, the system may delete any contained objects from the list of visible objects and replace the closed objects with the appropriate model. Id. The system may further determine if the object should be adjusted for level of display and/or if the object should be resized. Id.

For the convenience of the Board, Appellants provide the following mapping of the independent claims here on appeal. Appellants do not necessarily identify all portions of the specification and drawings relevant to the recited elements of the claims. Appellants provide the following mapping to help the Board make a decision on this Appeal, not to limit the scope of the claims.

Claim 6

A method comprising:

determining a list of visible objects in a scene, wherein at least a portion of the visible objects are components in a networked computer system; (e.g., p. 8, ll. 14-22; p. 17, ll. 5-21; p. 21, ll. 3-13)

filtering the list of visible objects based at least in part on a business interest selected by a user; (e.g., p. 9, ll. 15-20; p. 11, ll. 3-21; p. 31, l. 1 – p. 32, l. 6; p. 34, ll. 11-13; p. 39, ll. 3-10)

determining a position and orientation of at least one visible object from the filtered list; (e.g., p. 16, l. 21 – p. 17, l. 9; p. 36, l. 16 – p. 37, l. 22; Figs. 2, 4-5)

determining a model for the at least one visible object based on the position and orientation of the at least one visible object; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 21, ll. 14-20; p. 28, l. 15 – p. 29, l. 8; p. 34, l. 14 – p. 35, l. 11; p. 38, ll. 2-9; Fig. 5)

determining a first portion of the visible objects that are within a first visualization range; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 28, l. 15 – p. 29, l. 17; p. 34, l. 3 – p. 35, l. 11; p. 36, l. 1 – p. 38, l. 13)

displaying the first portion of the visible objects; (e.g., p. 16, ll. 1-4; p. 16, l. 21 – p. 17, l. 21)

in response to a navigation command, determining a second visualization range based at least in part on the navigation command; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 28, l. 15 – p. 29, l. 17; p. 37, l. 4 – p. 38, l. 13; Figs. 4-5)

determining a second portion of the visible objects that are within the second visualization range; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 28, l. 15 – p. 29, l. 17; p. 34, l. 3 – p. 35, l. 11; p. 36, l. 1 – p. 38, l. 13)

removing from the display any of the visible objects associated with the first portion but not the second portion of the visible objects; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 28, l. 15 – p. 29, l. 13; Fig. 5)

displaying the second portion of the visible objects; (e.g., p. 16, ll. 1-4; p. 16, l. 21 – p. 17, l. 21)

if the at least one visible object is not within the second visualization range, hiding a status indicator associated with the at least one visible object; (e.g., p. 16, ll. 15-20; p. 27, l. 19 – p. 28, l. 13; p. 30, ll. 12-16; p. 34, ll. 14-21; Fig. 3A)

rendering the model for the at least one visible object; and (e.g., p. 15, l. 19 – p. 16, l. 4; p. 37, l. 4 – p. 38, l. 15; Fig. 5)

rendering a status indicator representing an aggregate status of the at least one visible object and at least one related object in the networked computer system, wherein the aggregate status is based at least in part on two or more alerts that are weighted according to importance. (e.g., p. 27, l. 19 – p. 28, l. 13; p. 30, ll. 12-16; p. 34, ll. 14-21)

Claim 20

A system, comprising:

a server operable to store one or more event notifications from one or more components in a networked computer system; (e.g., p. 15, ll. 1-13; p. 16, ll. 5-14; p. 19, l. 1 – p. 20, l. 21; Figs. 1, 3)

a workstation communicatively coupled to the server and operable to: (e.g., p. 15, ll. 1-13; p. 16, ll. 5-14; p. 19, l. 1 – p. 20, l. 21; Figs. 1, 3)

determine a list of visible objects in a scene, wherein at least a portion of the visible objects are components in a networked computer system; (e.g., p. 8, ll. 14-22; p. 17, ll. 5-21; p. 21, ll. 3-13)

filter the list of visible objects based at least in part on a business interest selected by a user; (e.g., p. 9, ll. 15-20; p. 11, ll. 3-21; p. 31, l. 1 – p. 32, l. 6; p. 34, ll. 11-13; p. 39, ll. 3-10)

determine a position and orientation of at least one visible object from the filtered list; (e.g., p. 16, l. 21 – p. 17, l. 9; p. 36, l. 16 – p. 37, l. 22; Figs. 2, 4-5)

determine a model for the at least one visible object based on the position and orientation of the at least one visible object; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 21, ll. 14-20; p. 28, l. 15 – p. 29, l. 8; p. 34, l. 14 – p. 35, l. 11; p. 38, ll. 2-9; Fig. 5)

determine whether the at least one visible object is to be displayed within a predetermined visualization range; (e.g., p. 16, l. 21 – p. 17, l. 21; p. 28, l. 15 – p. 29, l. 17; p. 34, l. 3 – p. 35, l. 11; p. 36, l. 1 – p. 38, l. 13; Figs. 4-5)

if the at least one visible object is not within the predetermined visualization range, hide a status indicator associated with the at least one visible object; (e.g., p. 16, ll. 15-20; p. 27, l. 19 – p. 28, l. 13; p. 30, ll. 12-16; p. 34, ll. 14-21; Fig. 3A)

render the model for the at least one visible object; and (e.g., p. 15, l. 19 – p. 16, l. 4; p. 37, l. 4 – p. 38, l. 15; Fig. 5)

render a status indicator representing an aggregate status of the at least one visible object and at least one related object in the networked computer system, wherein the aggregate status is based at least in part on two or more alerts that are weighted according to importance. (e.g., p. 27, l. 19 – p. 28, l. 13; p. 30, ll. 12-16; p. 34, ll. 14-21)

Grounds of Rejection to be Reviewed on Appeal

Appellants request the Board to review:

(1)   the Examiner's rejection of Claims 6-9, 13-15, 18, 20-23, and 26 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,812,750 issued to Dev, et al. (*"Dev"*) in view of U.S. Patent No. 6,008,820 issued to Chauvin, et al. (*"Chauvin"*) and further in view of U.S. Patent No. 5,233,687 issued to Henderson Jr., et al. (*"Henderson"*);

(2)   the Examiner's rejection of Claim 10 under 35 U.S.C. 103(a) as being unpatentable over the combination of *Dev, Chauvin* and *Henderson* in view of "Exploiting Virtual Reality for Network Management," Proc. Int'l Conf. on Communications, IEEE, pp. 979-983, November 1992 by Lazar, A., et al. (*"Lazar"*);

(3)   the Examiner's rejection of Claims 16-17 and 24-25 under 35 U.S.C. 103(a) as being unpatentable over the combination of *Dev, Chauvin* and *Henderson* in view of U.S. Patent No. 5,495,607 issued to Pisello, et al. (*"Pisello"*); and

(4)   the Examiner's rejection of Claims 15 and 23 under 35 U.S.C. 112, first paragraph.

Argument

For at least the following reasons, the Examiner's rejections of Claims 6-10, 13-18, and 20-26 are improper and should be reversed.

I.   Claims 6-9, 13-15, 18, 20-23, and 26 are allowable over *Dev*, *Chauvin*, and *Henderson*

Claims 6-9, 13-15, 18, 20-23, and 26 have been improperly rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of *Dev*, *Chauvin*, and *Henderson*. Copies of *Dev*, *Chauvin*, and *Henderson* are included in Appendix A.

A.   Claims 6 and 20

The rejection of Claim 20 is improper for at least two reasons. First, the cited references fail to teach, suggest, or disclose "a workstation...operable to...filter the list of visible objects *based at least in part on a business interest selected by a user*" as recited in Claim 20. (Emphasis added). Second, the cited references fail to teach, suggest, or disclose "a status indicator representing an aggregate status of the at least one visible object and at least one related object in the networked computer system, wherein *the aggregate status is based at least in part on two or more alerts that are weighted according to importance*" as recited in Claim 20. (Emphasis added).

First, the cited references fail to teach, suggest, or disclose "a workstation...operable to...filter the list of visible objects *based at least in part on a business interest selected by a user*" as recited in Claim 20. (Emphasis added). In the final Office Action dated February 5, 2008 ("Office Action"), the Examiner relies on *Dev* for this aspect of Claim 20. (Office Action, pp. 3-4). The cited portion of *Dev* describes a network management system that provides "location and topological views" of a network. (Col. 12, ll. 42-51). The cited portion states: "By clicking on specified elements of a view, the user can obtain a view of the next lower level in the hierarchy." (Col. 12, ll. 47-49). As an example, *Dev* states that a high level view may be "a map of the world with network locations thereon," and a lower level view may be "a building...that contains network devices." (Col. 12, ll. 52-58). Thus, *Dev* discloses that a user may select a location (e.g., "country" or "building") on a map to view network devices at a lower level. Merely selecting a location on a map, however, does not teach, suggest, or disclose selecting "a business interest" as recited in Claim 20. In the Office

Action, the Examiner seems to concede this point, but argues that showing "lower level" network devices in a selected country or building is tantamount to showing "inventory." (Office Action, p. 4). *Dev*, however, never mentions "inventory." Furthermore, merely showing "lower level" network devices does not teach, suggest, or disclose selecting any "business interest," let alone selecting a "business interest" of "inventory." It is well established that "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (C.C.P.A. 1970)). In addition, "[t]he identical invention *must* be shown in as complete detail as is contained in the...claim," and "[t]he elements *must* be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added). Merely selecting a location on a map and showing "lower level" network devices, as described in *Dev*, fails to teach, suggest, or disclose filtering "the list of visible objects *based at least in part on a business interest selected by a user*" as recited in Claim 20. (Emphasis added). *Chauvin* and *Henderson* also fail to teach, suggest, or disclose this aspect of Claim 20. Because the cited references fail to teach, suggest, or disclose this aspect of Claim 20, the rejection is improper.

Second, the cited references fail to teach, suggest, or disclose "a status indicator representing an aggregate status of the at least one visible object and at least one related object in the networked computer system, wherein *the aggregate status is based at least in part on two or more alerts that are weighted according to importance*" as recited in Claim 20. (Emphasis added). In the Office Action, the Examiner relies on *Dev* for this aspect of Claim 20. (Office Action, p. 4). The cited portion of *Dev* describes a system that filters event messages based on event severity. (Col. 8, ll. 5-13). In particular, the cited portion of *Dev* states: "The user can specify model types and a minimum event severity for which events will be displayed on the user screen. Events from unspecified model types or less than the minimum severity will not be displayed." (Col. 8, ll. 5-13). *Dev* further explains that the system may only report the "most severe alarm." (Col. 8, ll. 27-29). Thus, the system in *Dev* will not display a particular event message if the event message has a severity that is below a particular level. However, merely determining to display (or not to display) a particular event or alarm message does not teach, suggest, or disclose an "*aggregate status*...based at least in part on two or more alerts" as recited in Claim 20. (Emphasis added). Furthermore, merely determining the severity of an event message (as described in *Dev*) does not teach, suggest, or

disclose an "aggregate status...based at least in part on *two or more alerts that are weighted according to importance*" as recited in Claim 20. (Emphasis added). *Chauvin* and *Henderson* also fail to teach, suggest, or disclose this aspect of Claim 20. Because the cited references fail to teach, suggest, or disclose this aspect of Claim 20, the rejection is improper. For at least the foregoing reasons, Claim 20 is allowable over the combination of *Dev, Chauvin,* and *Henderson.* Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 20.

Claim 6 is allowable over the combination of *Dev, Chauvin,* and *Henderson* for reasons that are analogous to those stated above with respect to Claim 20. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 6.

B.   Claims 13 and 21

The cited references fail to teach, suggest, or disclose each element of Claim 21. In particular, the cited references fail to teach, suggest, or disclose that "the list of visible objects is filtered such that the workstation omits displaying any components in the networked computer system that are not associated with the selected business interest" as recited in Claim 21. The Office Action relies on *Dev* for this aspect of Claim 21. (Office Action, p. 11). As explained above, the cited portion of *Dev* merely discloses a user selecting a location (e.g., "country" or "building") on a map to view network devices at a lower level. (Col. 12, ll. 42-58). The cited portion of *Dev* does not teach, suggest, or disclose a "selected business interest" as recited in Claim 21. Furthermore, the cited portion of *Dev* fails to teach, suggest, or disclose that "the list of visible objects is filtered such that the workstation *omits displaying any components in the networked computer system that are not associated with the selected business interest*" as recited in Claim 21. (Emphasis added). Thus, the cited references fail to teach, suggest, or disclose each element of Claim 21. For at least the foregoing reasons, Claim 21 is allowable over the combination of *Dev, Chauvin,* and *Henderson.* Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 21.

Claim 13 is allowable over the combination of *Dev, Chauvin,* and *Henderson* for reasons that are analogous to those stated above with respect to Claim 21. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 13.

C.   Claims 14 and 22

The cited references fail to teach, suggest, or disclose each element of Claim 22. In particular, the cited references fail to teach, suggest, or disclose that the "the selected business interest is at least one of the following: inventory; payroll; and accounting" as recited in Claim 22. In the Office Action, the Examiner relies on *Dev* for this aspect of Claim 22. (Office Action, p. 4). The cited portion of *Dev* discloses a database manager that manages system data such as "configuration data, an event log, statistics, history, and current state information." (*Dev*; col. 3, ll. 64-65). This type of system data fails to teach, suggest, or disclose a "selected business interest" that is at least one of "inventory; payroll; and accounting" as recited in Claim 22. Because the cited references fail to teach, suggest, or disclose this aspect of Claim 22, the cited references fail to support the rejection. For at least the foregoing reason, Claim 22 is allowable over the combination of *Dev*, *Chauvin*, and *Henderson*. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 22.

Claim 14 is allowable over the combination of *Dev*, *Chauvin*, and *Henderson* for reasons that are analogous to those stated above with respect to Claim 22. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 14.

D.   Claims 18 and 26

The cited references fail to teach, suggest, or disclose each element of Claim 18. For example, the cited references fail to teach, suggest, or disclose "in response to a command to navigate closer to the at least one visible object, rendering one or more internal components of the at least one visible object...and in response to a command to navigate further from the at least one visible object, hiding one or more internal components of the at least one visible object" as recited in Claim 18. In the Office Action, the Examiner relies on *Chauvin* for these elements of Claim 18. The cited portion of *Chauvin* describes scaling objects or "chunks" in a scene. (Col. 31, l. 25 – col. 32, l. 28). In particular, the cited portion of *Chauvin* states:

> Unlike conventional graphics systems which use a large frame buffer and Z-buffer in RAM to store color, depth, and other information for every pixel, our system divides objects in a scene among image regions called "chunks" and separately renders object geometries to these chunks. In one embodiment, objects are rendered to gsprites. The gsprites are sub-divided into chunks, and the chunks are rendered separately. While our description refers to several specific embodiments, it should be understood that chunking can be applied in a variety of ways without departing from the scope of the invention.

(Col. 31, ll. 25-35). The cited portion of *Chauvin* further states that a graphics scene may be "enclosed by a bounding box" and the "bounding box may be rotated, scaled, expanded or otherwise transformed." (Col. 31, ll. 36-42). Thus, *Chauvin* discloses separately rendered "chunks" and scaling or expanding a "bounding box." The cited portion of *Chauvin*, however, does not teach, suggest, or disclose "in response to a command to navigate closer to the at least one visible object, rendering one or more internal components of the at least one visible object...and in response to a command to navigate further from the at least one visible object, hiding one or more internal components of the at least one visible object" as recited in Claim 18. Because the cited references fail to teach, suggest, or disclose these elements of Claim 18, the cited references fail to support the rejection. For at least the foregoing reason, Claim 18 is allowable over the combination of *Dev, Chauvin,* and *Henderson.* Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 18.

Claim 26 is allowable over the combination of *Dev, Chauvin,* and *Henderson* for reasons that are analogous to those stated above with respect to Claim 18. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 26.

E.   Claims 7-9, 15, and 23

Claims 7-9, 15, and 23 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. Accordingly, the rejections of these claims are improper. Appellants respectfully request the Board to reverse the rejections of Claims 7-9, 15, and 23.

II.   Claim 10 is allowable over *Dev, Chauvin, Henderson,* and *Lazar*

Claim 10 has been improperly rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of *Dev, Chauvin, Henderson,* and *Lazar.* The rejection of Claim 10 is

improper because the cited references fail to teach, suggest, or disclose each element of Claim 10. For example, the cited references fail to teach, suggest, or disclose "determining whether an automatic flight mode property has been set" as recited in Claim 10. The Office Action relies on *Lazar* for this element of Claim 10. (Office Action, p. 12). The cited portion of *Lazar* states: "The user is provided with navigational tools to 'fly' over the scene and into objects." (P. 982, col. 1). Merely disclosing a tool to "fly" over a scene does not teach, suggest, or disclose "an *automatic* flight mode" or "*determining whether an automatic flight mode property has been set*" as recited in Claim 10. (Emphasis added). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (C.C.P.A. 1970)). Because the cited references fail to teach, suggest, or disclose each element of Claim 10, the cited references fail to support the rejection. Therefore, Claim 10 is allowable over the combination of *Dev, Chauvin, Henderson,* and *Lazar*. Accordingly, Appellants respectfully request the Board to reverse the rejection of Claim 10.

III. Claims 16-17 and 24-25 are allowable over *Dev, Chauvin, Henderson,* and *Pisello*

Claims 16-17 and 24-25 have been improperly rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of *Dev, Chauvin, Henderson,* and *Pisello*. The rejection of Claims 16-17 and 24-25 is improper because the Examiner fails to properly establish any rational for modifying *Dev* in view of *Pisello*. "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, -- U.S. --, 127 S.Ct. 1727, 1741 (2007). "There must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Innogenetics v. Abbott Laboratories*, 512 F.3d 1363, 1373 (Fed. Cir. 2008) (holding that expert testimony which did not identify motivation to combine references was properly excluded).

An Examiner must explicitly articulate the reasoning for combining teachings from different references. The Federal Circuit stated:

> Often, it will be necessary...to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an

apparent reason to combine the known elements in the fashion claimed by the patent at issue. *To facilitate review, this analysis should be made explicit.*

KSR Int'l Co., 127 S.Ct. at 1740-41 (emphasis added). Vague and conclusory statements are insufficient to establish a reason for combining the teachings of different references. *See Innogenetics*, 512 F.3d at 1373-74 (excluding obviousness testimony that was "vague and conclusory" regarding the motivation to combine references).

In the present case, the Examiner fails to provide a rational and articulated reason for modifying *Dev* in view of *Pisello*. In the Office Action, the Examiner merely states that *Pisello* discloses "common status information to track and display in a network environment." (Office Action, p. 13). The Examiner does not provide any reason for modifying *Dev* to include the "common status information" disclosed in *Pisello*. The Examiner's vague and conclusory statements do not provide "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Innogenetics*, 512 F.3d at 1373. Therefore, the proposed combination of *Dev, Chauvin, Henderson*, and *Pisello* is improper. For at least the foregoing reason, Appellants respectfully request the Board to reverse the rejection of Claims 16-17 and 24-25.

IV. Claims 15 and 23 comply with the written description requirement of 35 U.S.C. § 112

Claims 15 and 23 have been improperly rejected under 35 U.S.C. § 112, first paragraph. The Examiner asserts that the specification does not support "omitting any status indicators that indicate OK status" as recited in Claim 15. The rejection is improper because the specification provides adequate support for the recited element of Claim 15. The specification states:

> The present invention provides a system that indicates the status of objects by use of colored indicator lights. The status reflects what is going on inside computers, operating systems, networks, disk drives, databases and critical processes. Such status indicators are aggregated so that network segments, subnetworks, buildings and cities reflect the status of what is in them. At the highest level, when traveling over the map, status indicators show the aggregate status for cities and buildings, in the form of globes that hover over the objects. This is shown in FIG. 11.
>
> *Only problems are indicated: to keep the scene simple, green lights indicating OK status are omitted.* The aggregation is intelligent, weighing alerts based on importance, to avoid everything always showing red, a problem with early network management systems. The invention discloses that

the view inside a building reflects the aggregate status of subnetworks, segments, and eventually the individual machines. *Again, they are shown with hovering colored globular lights, and show only problem spots.* Inside a computer, the systems show the status of components and subsystems. Our indicator shows the status of the computer itself, in terms of loading, process queue length, and number of users, while the status of its subsystems are indicated separately on each one.

(P. 27, l. 19 – p. 26, l. 13) (emphasis added).[1] At least the foregoing portion of the specification supports "omitting any status indicators that indicate OK status" as recited in Claim 15. Because the specification supports the recited elements of Claim 15, Appellants respectfully request the Board to reverse the Examiner's rejection of Claim 15.

Claim 23 is adequately supported by the specification for reasons that are analogous to those stated above with respect to Claim 15. Accordingly, Appellants respectfully request the Board to reverse the Examiner's rejection of Claim 23.

Appellants note that the Examiner improperly objects to the specification as not providing antecedent basis for "omitting any status indicators that indicate OK status" as recited in Claim 15. (Office Action, p. 5). As shown above, however, the specification adequately supports Claim 15. Accordingly, Appellants respectfully request the Board to reverse the Examiner's objection to the specification.

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[1] In citing this portion of the specification, Appellants do not intend to limit the claims to any particular embodiments.
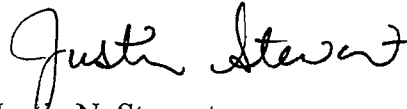
Conclusion

Appellants have demonstrated that (1) the Examiner failed to establish a *prima facie* case for obviousness under 35 U.S.C. § 103(a), and (2) Claims 15 and 23 comply with the written description requirement. Therefore, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the rejection of Claims 6-10, 13-18, and 20-26 and instruct the Examiner to issue a notice of allowance as to all pending claims.

The Commissioner is hereby authorized to charge the large entity fee of $510.00 under 37 C.F.R. § 41.20(b)(2) for filing this Appeal Brief and the $120.00 one month extension fee to Deposit Account No. 02-0384 of Baker Botts L.L.P. Although no other fees are believed to be due at this time, the Commissioner is hereby authorized to charge any additional fees and/or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Appendix A: Claims on Appeal

1.   **(Withdrawn)** A method for updating a display of at least one component of a networked computer system, comprising:

displaying at a visualization workstation a portion of a first subsystem of a networked computer system;

receiving at the visualization workstation a first event notification from an object repository operating on a remote server, the first event notification being associated with a first component of the networked computer system, the first component positioned in a second subsystem of the networked computer system;

determining a trajectory from the displayed portion of the first subsystem to the first component in the second subsystem;

displaying a simulated flight from the displayed portion of the first subsystem to the first component in the second subsystem, the displayed simulated flight depicting the determined trajectory through a three-dimensional environment associated with the networked computer system;

determining a position and orientation of the first component;

determining a photo-realistic model for the first component based on the first event notification, the position and the orientation of the first component;

displaying the determined photo-realistic model and another photo-realistic model representing a second component of the second subsystem, the second component associated with a second event notification; and

displaying a status indicator representing an aggregate status of the second subsystem, the status indicator based at least in part on the first event notification and the second event notification, the first and second event notifications weighted according to respective importance levels of the first and second components.

2.   **(Withdrawn)** The method of claim 1, wherein the first event notification represents an addition of the first component to the networked computer system.

3.   **(Withdrawn)** The method of claim 1, wherein the first event notification represents a deletion of the first component from the networked computer system.

4.   **(Withdrawn)** The method of claim 1, wherein the first event notification represents a change to a structure of the first component.

5.   **(Withdrawn)** The method of claim 1, wherein the first event notification represents a change to the status of the first component.

6.   **(Previously Presented)** A method comprising:

determining a list of visible objects in a scene, wherein at least a portion of the visible objects are components in a networked computer system;

filtering the list of visible objects based at least in part on a business interest selected by a user;

determining a position and orientation of at least one visible object from the filtered list;

determining a model for the at least one visible object based on the position and orientation of the at least one visible object;

determining a first portion of the visible objects that are within a first visualization range;

displaying the first portion of the visible objects;

in response to a navigation command, determining a second visualization range based at least in part on the navigation command;

determining a second portion of the visible objects that are within the second visualization range;

removing from the display any of the visible objects associated with the first portion but not the second portion of the visible objects;

displaying the second portion of the visible objects;

if the at least one visible object is not within the second visualization range, hiding a status indicator associated with the at least one visible object;

rendering the model for the at least one visible object; and

rendering a status indicator representing an aggregate status of the at least one visible object and at least one related object in the networked computer system, wherein the aggregate status is based at least in part on two or more alerts that are weighted according to importance.

7.   **(Original)** The method of claim 6, further comprising determining whether a complete scene change is required.

8.   **(Original)** The method of claim 6, further comprising determining whether an object has been added to the scene.

9. **(Original)** The method of claim 6, further comprising determining whether an object has been deleted from the scene.

10. **(Original)** The method of claim 6, further comprising determining whether an automatic flight mode property has been set.

11.   (**Withdrawn**) A system for updating a display of at least one component of a networked computer system, comprising:

a server operable store one or more event notifications from one or more components in a networked computer system;

a visualization workstation communicatively coupled to the server and operable to:

display a portion of a first subsystem of the networked computer system;

receive from the server a first event notification associated with a first component of the networked computer system, the first component positioned in a second subsystem of the networked computer system;

display a simulated flight based on a trajectory from the displayed portion of the first subsystem to the first component in the second subsystem, the display depicting the trajectory through a three-dimensional environment associated with the networked computer system;

determine a position and orientation of the first component;

determine a photo-realistic model for the first component based on the first event notification, the position and the orientation of the first component;

display the determined photo-realistic model and another photo-realistic model representing a second component of the second subsystem, the second component associated with a second event notification; and

display a status indicator representing an aggregate status of the second subsystem, the status indicator based at least in part on the first event notification and the second event notification, the first and second event notifications weighted according to respective importance levels of the first and second components.

12.   (**Withdrawn**) The method of claim 11, wherein the displayed simulated flight comprises real-time re-scaling of one or more photo-realistic models representing one or more components of the networked computer system.

13.   **(Previously Presented)** The method of Claim 6, wherein:

the model is rendered by a workstation; and

the list of visible objects is filtered such that the workstation omits displaying any components in the networked computer system that are not associated with the selected business interest.

14.   **(Previously Presented)** The method of Claim 6, wherein the selected business interest is at least one of the following:

inventory;

payroll; and

accounting.

15.   **(Previously Presented)** The method of Claim 6, further comprising:

displaying a plurality of status indicators; and

omitting any status indicators that indicate OK status.

16.   **(Previously Presented)** The method of Claim 6, wherein the status indicator is based at least in part on loading and process queue length of at least one computer in the networked computer system.

17.   **(Previously Presented)** The method of Claim 6, wherein the status indicator is based at least in part on a number of users associated with at least one computer in the networked computer system.

18.   **(Previously Presented)** The method of Claim 6, further comprising:

in response to a command to navigate closer to the at least one visible object, rendering one or more internal components of the at least one visible object; and

in response to a command to navigate further from the at least one visible object, hiding one or more internal components of the at least one visible object.

19.   **(Withdrawn)** The method of Claim 6, wherein the scene is a first scene, and further comprising:

based at least in part on a command to navigate to a component in a second scene, determining a trajectory from the first scene to the second scene; and

displaying a flight from the first scene to the second scene, the displayed flight depicting the determined trajectory through a three-dimensional environment associated with the networked computer system.

20.   **(Previously Presented)** A system, comprising:

a server operable to store one or more event notifications from one or more components in a networked computer system;

a workstation communicatively coupled to the server and operable to:

determine a list of visible objects in a scene, wherein at least a portion of the visible objects are components in a networked computer system;

filter the list of visible objects based at least in part on a business interest selected by a user;

determine a position and orientation of at least one visible object from the filtered list;

determine a model for the at least one visible object based on the position and orientation of the at least one visible object;

determine whether the at least one visible object is to be displayed within a predetermined visualization range;

if the at least one visible object is not within the predetermined visualization range, hide a status indicator associated with the at least one visible object;

render the model for the at least one visible object; and

render a status indicator representing an aggregate status of the at least one visible object and at least one related object in the networked computer system, wherein the aggregate status is based at least in part on two or more alerts that are weighted according to importance.

21.   **(Previously Presented)** The system of Claim 20, wherein the list of visible objects is filtered such that the workstation omits displaying any components in the networked computer system that are not associated with the selected business interest.

22.   **(Previously Presented)** The system of Claim 20, wherein the selected business interest is at least one of the following:

inventory;

payroll; and

accounting.

23.   **(Previously Presented)** The system of Claim 20, wherein the workstation is operable to:

display a plurality of status indicators; and

omit any status indicators that indicate OK status.

24.   **(Previously Presented)** The system of Claim 20, wherein the status indicator is based at least in part on loading and process queue length of at least one computer in the networked computer system.

25.   **(Previously Presented)** The system of Claim 20, wherein the status indicator is based at least in part on a number of users associated with at least one computer in the networked computer system.

26.   **(Previously Presented)** The system of Claim 20, wherein the workstation is operable to:

in response to a command to navigate closer to the at least one visible object, render one or more internal components of the at least one visible object; and

in response to a command to navigate further from the at least one visible object, hide one or more internal components of the at least one visible object.

27.   **(Withdrawn)** The system of Claim 20, wherein:

the scene is a first scene; and

the workstation is further operable to:

based at least in part on a command to navigate to a component in a second scene, determine a trajectory from the first scene to the second scene; and

display a flight from the first scene to the second scene, the displayed flight depicting the determined trajectory through a three-dimensional environment associated with the networked computer system.

Appendix B: Evidence

U.S. Patent No. 5,812,750 issued to Dev, et al.

U.S. Patent No. 6,008,820 issued to Chauvin, et al.

U.S. Patent No. 5,233,687 issued to Henderson Jr., et al.

"Exploiting Virtual Reality for Network Management," Proc. Int'l Conf. on Communications, IEEE, pp. 979-983, November 1992 by Lazar, A., et al.

U.S. Patent No. 5,495,607 issued to Pisello, et al.

Other than the above references, no evidence was submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, and no other evidence was entered by the Examiner and relied upon by Appellants in the Appeal.

Appendix C: Related Proceedings

The following appeal may be related to or may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No.:	2008-2553
Appn. Ser. No.:	09/982,301
Appellant:	Anders Vinberg
Represented by:	Baker Botts LLP
Assignee:	Computer Associates Think, Inc. (pursuant to assignment recorded at reel 012940, frame 0878)

The Board has not yet issued a decision on Appeal No. 2008-2553.

Appellants, the undersigned Attorney for Appellants, and the Assignee know of no other applications on appeal that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.